

## High Court Declares Key Provisions of the PBO Act Unconstitutional Public Benefit Organization registration

*Otieno & 2 others vs Attorney General & Another: Katiba Institute & 9 others (interested Parties) (Petition E519 of 2024) [2025] KECH 8557 (KLR) (Constitutional and Human Rights) (30 April 2025): Judgment*

### Key Points

The High Court declared the following provisions of the Public Benefits Authority Act (2013) (**PBO Act**) unconstitutional.

- Paragraph 5(1) and 5(2) of the Fifth Schedule - requiring registration of existing NGOs under the PBO Act;
- Sections 18 (1) to (3) and section 19 (1) (b) deal with the procedure for the suspension and cancellation of a PBO's certificate of registration.
- Section 21(1), 21(9) and 23 (2) which deals with the establishment of a National Federation of PBOs and membership;
- Section 32 imposes a duty on each registered PBO to provide certain information to the PBO Regulatory Authority; and
- Sections 35 and 50 which provide for the composition of the PBO regulatory Authority and the PBO Disputes tribunal, respectively;

### Implications

- **No Re-registration Required:** Existing NGOs are no longer required to apply for registration under the PBO Act. The Court found the re-registration requirement *unconstitutional*, violating the rights to association and fair administrative action.
- **Automatic Transition:** The Court ordered the PBO Authority to automatically register NGOs that were already compliant under the previous law.
- **Other Provisions Invalidated:** Some of the other contested provisions (relating to data privacy, forced membership in a national body, and composition of tribunals) were also found to be unconstitutional, in whole or in part.

## Comment

The above decision of the High Court brings reprieve to existing NGOs that were registered under the repealed NGO Coordination Act, who were facing the burden of reapplying for registration under the PBO Act ahead of the compliance deadline which has been extended to 13 May 2026.

Currently, the draft regulations implementing the PBO Act are undergoing public participation. As at the date of this update, no appeal has been lodged.

If you have any questions arising from this article, you can contact our legal law team.



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