



**Chepkwony v Tegat Tea Factory Ltd & 5 others (Civil Suit E008 of 2024)
[2024] KEHC 11361 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL SUIT E008 OF 2024
JK SERGON, J
SEPTEMBER 26, 2024**

BETWEEN

BEATRICE CHEPKIRUI CHEPKWONY PLAINTIFF

AND

TEGAT TEA FACTORY LTD 1ST DEFENDANT

KENYA TEA DEVELOPMENT AGENCY (HOLDING) LTD 2ND DEFENDANT

THE REGIONAL MANAGER (REGION 5) 3RD DEFENDANT

TEA BOARD OF KENYA 4TH DEFENDANT

MIKE KIPNGETICH LANGAT 5TH DEFENDANT

BII EVANS KIPLANGAT 6TH DEFENDANT

JUDGMENT

1. The plaintiff filed a plaint dated 3rd July, 2024 seeking the following reliefs;
 - a. An order of permanent injunction restraining the defendants either by themselves jointly and/severally, agents, employees, servants or otherwise confirming, declaring, announcing, publishing and/or otherwise endorsing the 6th Defendant as the duly nominated director of Tegat Tea Factory representing Waldai Electoral Zone at the 1st Defendants special Annual General Meeting convened for 18th July, 2024 or any other day.
 - b. That the elections conducted on 28th June, 2024 for the position of the 1st defendants director representing Waldai Electoral Zone be declared null and void and a notice for fresh elections do issue in a procedural manner as stipulated by law.
 - c. Costs of the suit



- d. Any other relief the honourable court may deem fit and just to grant in the interest of justice.
2. The plaintiff Beatrice Chepkirui Chepkwony swore a verifying affidavit in support of the plaint and filed a list of witnesses and list of documents alongside her plaint.
 3. The plaintiff's case was that she was cleared to run for the position of directorship Waldai Electoral Zone and was issued with a clearance certificate. The plaintiff stated that election exercise was carried out in a manner that amounted to clear and blatant violation of the rules and regulations set out in the election manual resulting in miscarriage of justice, a flawed process and an irregular election process wherein the 6th defendant was allegedly declared the winner in the Waldai Electoral Zone. The plaintiff stated that one of the regulations in the election manual was that each voter ought to have been vetted against the 1st defendant's register using the voters national identity card and current payslip which vetting was not done and as a consequence the elections were riddled with irregularities and rigging and an abrupt change of voting timelines, voting was to commence at 7AM, however, voting commenced at 4PM until very late in the night. The plaintiff stated that being dissatisfied with the outcome of the elections, she lodged an appeal to the Election Dispute Resolution Committee in accordance with the election manual and the same was not considered. The plaintiff stated that she is apprehensive, the above notwithstanding, the 6th defendant would be declared and/or sworn in as the duly elected director, Waldai Electoral Zone.
 4. The 1st, 2nd, 3rd, 5th and 6th defendants on their part filed a joint defence dated 28th July 2024, denying the allegations in the plaint. The defendants conceded that voting commenced at 3PM pursuant to consensus among the contestants and that voting was conducted into the wee hours of the night. The defendants stated that the elections were delayed because the IEBC faced logistical challenges in transportation of election material on account of the nation wide "Gen Z Protests", however, maintained that there were no malpractices witnessed in the entire process.
 5. This court issued directions that the suit be dispensed by way of affidavit evidence and submissions.
 6. The plaintiff filed a reply to the joint statement of defence and the sworn affidavits of Gladys Chepngeno, Japhet Kipkorir Kirui and Betty Chelangat all dated 14th August, 2024 in support of her case.
 7. Gladys Chepngeno in her sworn affidavit avers that the elections which were supposed to commence at 7AM on 28th June, 2024 commenced at 4PM without prior or sufficient notice and that the voting exercise was conducted into the wee hours of the night, thereby disenfranchising young mothers.
 8. Japhet Kipkorir Kirui in his sworn affidavit avers that the polling stations did not have sufficient lighting as voting was conducted into the wee hours of the night. He further avers that women who supported the plaintiff's candidature left the polling stations before the voting exercise commenced to go fend for their families at home.
 9. Betty Chelangat in her sworn affidavit avers that she is a person living with disability and recognized as such by the National Council of Persons living with Disability vide Membership No. NCPWD/P/58313 and further that persons with disabilities like her were not granted adequate facilitation on mobility and since the voting exercise began very late, they left to fend for their families.
 10. The defendants filed the sworn affidavits of Mike Kipngetch Langat (the 5th defendant), Bii Evans Kiplangat (the 6th defendant) and Dickson Kirui (the Company Secretary of the 1st defendant) sworn on 20th August, 2024 in support of their case.
 11. Mike Kipngetch Langat the duly appointed returning officer for Togat Tea Factory and authorised by IEBC the 5th defendant to swear the affidavit, avers that elections commenced at 3PM later than



initially scheduled due to logistical challenges as a result of the Gen Z protests. He avers that to ensure that all eligible voters had the opportunity to cast their votes, the voting hours were extended to compensate for the hours lost. He avers that the extension did not affect the transparency or integrity of the elections, as the voting process was conducted in a well-lit environment and the parties were allowed to have their agents present. He avers that during the said elections, he and other presiding officers ensured that all procedural and legal requirements were adhered to including verification of voter identities, issuance of ballot papers and maintenance of order at the polling station. He further avers that he is aware of the allegations of irregularities in the conduct of the elections, including claims of voter disenfranchisement, unauthorised voting by proxy and bribery. However, he denied the occurrence of any irregularities or malpractice in the conduct of the elections.

12. Bii Evans Kiplangat the 6th defendant in his sworn affidavit avers that the election exercise was conducted on 28th June, 2024 and he was duly elected as director representing Waldai Zone. He avers that the election commenced at 3PM pursuant to a consensus reached between all contestants himself and the plaintiff included. He avers that contrary to the plaintiff's assertions, the elections were credible, free and fair. He avers that it would be unfair to disturb the express will of Togat Tea Factory Limited who had overwhelmingly elected him as a director on account of spurious allegations of irregularities.
13. Dickson Kirui the Company Secretary of Togat Tea Factory, the 1st defendant avers that the elections commenced at 3PM pursuant to consensus reached between all contestants, the plaintiff included. He avers that the plaintiff did not comply with clause 8 of the elections manual rather she circumvented the dispute resolution mechanism on the election manual and chose to unduly engage the returning officer via his WhatsApp account the fact that the returning officer is not seized of any mandate to determine disputes arising after declaration of results notwithstanding. He avers that it is therefore not proper for the applicant to claim that her appeal was dismissed without fair hearing yet she never submitted any actionable complaint as required under clause 8 of the elections manual.
14. The parties filed their written submissions which this court has duly considered.
15. The plaintiff filed her submissions, relying on article 86 of *the constitution* of Kenya, 2010 which provides as follows; "At every election, the Independent Electoral and Boundaries Commission shall ensure that--
 - (a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent; (b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station; (c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and (d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials." The plaintiff maintained that the electoral system in Kenya is hinged on *the constitution* and the elections carried on 28th June, 2024 were not exempt. The plaintiff cited the case of *Gatirau Peter Munya v Dickson Mwenda Kitbinji & 2 others* [2014] eKLR] at pg 235 the Supreme Court observed as follows; "The emphasis on free and fair elections, through an electoral system that is simple, accurate, verifiable, secure, accountable and transparent, in Articles 81(e) and 86 of *the Constitution*, has a rich Kenyan historical, economic, social, political, and cultural context. Article 86 (b), for example, provides that the votes cast are to be counted, tabulated, and results announced promptly by the presiding officer at each polling station. This is because our electoral history is rife with malpractices that occur during the transportation of ballot boxes from polling stations to constituency counting-centres." The plaintiff maintained that elections in the Waldai Electoral Zone failed to meet the criteria of accuracy, accountability and transparency.



16. The plaintiff contended the defendants' assertion that the plaintiff did not exhaust the internal forum for dispute resolution. The plaintiff reiterated that in line with regulation 8 of the election manual she lodged her appeal to the Election Dispute Resolution Committee within the stipulated timelines and made the requisite payment, however, her appeal was dismissed on flimsy grounds. The plaintiff was adamant that she was denied the right to be heard in a fair and public hearing before an impartial body as provided in article 50 (1) of *the Constitution* of Kenya thereby necessitating the instant suit.
17. The 1st, 2nd, 3rd, 5th and 6th defendants filed joint submissions, they submitted that it is trite law before a party invokes the jurisdiction of the court, they first ought to exhaust all the administrative remedies in place and cited the case *Geoffrey Mutbinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR of where the Court of Appeal stated that; "It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution." The defendants were adamant that the election manual establishes a dispute resolution committee and the dispute resolution process, moreso that regulation 8 (2) of the elections manual stipulates that any dispute arising from the elections must be made in writing to the chairperson. The defendants argued that the plaintiff did not submit any appeal as stipulated in the manual, instead she submitted her purported appeal with the returning officer who is not a member of the dispute resolution committee. The defendants maintained that the plaintiff did not submit any actional complaint. The defendants submitted that they were aware of the exceptions to the doctrine of exhaustion, however, in the instant case there are no exceptional circumstances that would justify bypassing the prescribed dispute resolution mechanism. The defendants maintained that this court is divested of jurisdiction as the suit herein offends the doctrine of exhaustion of remedies. The defendants relied on the case of *Muchiri v Independent Electoral & Boundaries Commission & 3 others (Civil Case E002 of 2024)* [2024] KEHC 9980 (KLR) (30 July 2024) (Ruling) where Mwongo J. when faced with a similar matter held as follows; " I think I have said enough on the issue of jurisdiction and the doctrine of exhaustion. In light of all the foregoing, I find and hold that the applicant failed to utilise the Dispute Resolution Mechanism at the first instance. Accordingly, he is not entitled to litigate the dispute here, that ought to have been determined in the Dispute Resolution Committee under the Election's Manual. In short, this court is not the correct forum with first instance jurisdiction to deal with the applicant's dispute."
18. The defendants argued that it was clear that the plaintiff's suit sought the nullification of the KTDA small holder director election held on 28th June, 2024 on account of various irregularities and malpractices. The defendant relied on section 83 of the *Elections Act* which is partially instructive in determining the validity of an election in cases where there are allegations of non compliance with electoral laws. It states that; "No election shall be declared to be void by reason of noncompliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in *the Constitution* and in that written law or that the non-compliance did not affect the result of the election." They further cited the case of *Hassan Mohamed Hassan & another v Independent Electoral & Boundaries Commission & 2 others* [2013] eKLR which provides valuable insight into how courts interpret section 83 of the *Elections Act*. The court held that a breach or regulation and procedures, which does not significantly interfere with the democratic choice of voters, is not sufficient to invalidate an election. The court is primarily concerned with whether the alleged irregularities were so substantial that they undermined the principles of a free and fair election. The



defendants conceded that despite some logistical challenges they made efforts to accommodate various voter groups, thereby ensuring an inclusive and participatory process. The defendants were adamant that the plaintiff failed to provide sufficient evidence that any of the alleged irregularities significantly compromised the electoral process or that they affected the outcome of the election. The defendants urged this court to make a finding that the plaintiff's suit lacks merit and the claims therein do not warrant the reliefs sought.

19. The defendants urged this court to take cognisance of the fact that the elections were conducted within strict timelines earlier ordered by the court sitting in Nairobi in Constitutional Petition [No E254 of 2020](#) where it was specifically directed that smallholder factories conduct their directors' elections by end of June, 2024.
20. The defendants argued that all the contestants were satisfied with the results of the elections as is evident from the election declaration forms which were all duly signed by the contestants' respective agents.
21. This court has considered the pleadings, affidavit evidence and submissions filed by the respective parties and the sole issue for determination is whether this court has the jurisdiction to entertain this suit. The question of jurisdiction goes to the heart of every matter in any litigation. This has been the position in many cases over many years. In the leading case of [The Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Ltd](#) (1989) KLR it was held that: - "Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tool in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction."
22. The election of directors is part of the internal affairs of a company and whereas Article 165 of [the Constitution](#) vests this court with unlimited original jurisdiction in criminal and civil matters this court would be hesitant to interfere with such elections more so where, as in this case, the company itself has provided a mechanism for resolution of election disputes and the same has not been exhausted. As a shareholder the plaintiff is bound by the election rules laid down in the company's Election Manual and she should therefore have invoked and exhausted the dispute resolution mechanism set out therein before coming to this court. The plaintiff argued she lodged her appeal to the Election Dispute Resolution Committee within the stipulated timelines and made the requisite payment, however, her appeal was dismissed on flimsy grounds. The defendants argued that the plaintiff did not submit any appeal as stipulated in the manual, instead she submitted her purported appeal with the returning officer who is not a member of the dispute resolution committee. The defendants therefore maintained that the plaintiff did not submit any actional complaint. I concur with the defendants in this respect, the plaintiff has not demonstrated that she followed the dispute resolution mechanism as set out in regulations 6-8 of the elections manual.
23. The defendants submitted that they were aware of the exceptions to the doctrine of exhaustion, however, in the instant case there are no exceptional circumstances that would justify bypassing the prescribed dispute resolution mechanism. The defendants maintained that this court is divested of jurisdiction as the suit herein offends the doctrine of exhaustion of remedies. The defendants relied on the case of [Muchiri v Independent Electoral & Boundaries Commission & 3 others \(Civil Case E002 of 2024\)](#) [2024] KEHC 9980 (KLR) (30 July 2024) (Ruling) where Mwongo J. when faced with a similar matter held as follows; " I think I have said enough on the issue of jurisdiction and the doctrine of exhaustion. In light of all the foregoing, I find and hold that the applicant failed to utilise the Dispute Resolution Mechanism at the first instance. Accordingly, he is not entitled to litigate the dispute here, that ought to have been determined in the Dispute Resolution Committee under the Election's Manual. In short, this court is not the correct forum with first instance jurisdiction to deal with the applicant's dispute."



24. There exists an election dispute mechanism in the 1st Defendant's Election Rules which the Plaintiff ought to have exhausted before coming to this court and for that reason this court cannot grant the prayers sought. In the upshot, I find that not only is this suit not properly before this court but that it has no merit. Assuming that this suit is properly before this Court, this court is not convinced that the Plaintiff proved her case to required standard. The evidence tendered by the Plaintiff did not prove that Election held on 28th June, 2024 not free nor fair. The irregularities pointed out did not substantially affect the outcome of that Election.

In the end, this suit is found to be without merit. It is dismissed with costs being borne by the Plaintiff.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY SEPTEMBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant - Rutoh

Koech Will for the 1st, 2nd, 3rd & 6th Defendant

Mwita for the Plaintiff

