



**Rono v Langat & 3 others (Civil Suit E009 of 2024)
[2024] KEHC 11510 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL SUIT E009 OF 2024
JK SERGON, J
SEPTEMBER 26, 2024**

BETWEEN

DAVID KIMUTAI RONO PLAINTIFF

AND

ISAIAH KIPKOECH LANGAT 1ST DEFENDANT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION OF
KENYA 2ND DEFENDANT**

MOMUL TEA FACTORY LIMITED 3RD DEFENDANT

TEA BOARD OF KENYA 4TH DEFENDANT

JUDGMENT

1. The plaintiff filed a plaint dated 30th July, 2024 seeking the following reliefs;
 - a)) A declaration that the elections conducted by the 1st, 2nd, 3rd and 4th Defendants in Chemalul Zone on 28/06/2024 and announced 29/06/2024 were not free and fair and were marred with irregularities.
 - b) An order invalidating the election results that were announced 29/06/2024 by the 2nd Defendant.
 - c) An order cancelling the certificate issued to the 1st Defendant by the 2nd Defendant that declared the 1st Defendant as Director-Elect Chemamul Zone;
 - d) An order barring the 2nd, 3rd and 4th Defendants and tea growers from inaugurating, swearing in and/or confirming the 1st Defendant on 17 July, 2024 as the Director representing tea growers in Chemamul Zone.



- e) An injunction barring the 1st Defendant from being sworn in on 17 July, 2024, participating in the meetings and events organised by the 3rd Defendant, purporting to represent Chemamul Zone as a director and/or undertaking the roles of a director for the 3rd Defendant.
 - f) An order directing the 2nd, 3rd & 4th Defendants to undertake a repeat election of director in Chemamul Zone as provided for in clause 4 (2) & (8) of the Elections Manual.
 - g) Each party to bear its/his own costs.
 - h) Any other relief this honourable court may deem fit to grant.
2. The plaintiff David Kimutai Rono swore a verifying affidavit in support of the plaint and filed a list of witnesses and list of documents alongside his plaint.
 3. The plaintiff's case was that the High Court of Kenya directed the 2nd, 3rd & 4th respondent to declare the directors' position vacant and hold the elections on or before the end of June, 2024. The 3rd defendant with the support of the 2nd and 4th Defendants organised to hold its directors' elections on 28th June, 2024 between 7AM and 3PM, however, the elections got delayed. That the voting materials were delivered by the 2nd Defendant at 4PM when the elections commenced and went on till past midnight of 28th June, 2024. The plaintiff's claim against the 1st, 2nd, 3rd and 4th Defendants is that the voting exercise which was done in the night were marred with many irregularities, voter buying, manipulation and intimidation of voters causing more than 3,000 voters to shy away hence a low voter turnout. The plaintiff set out the particulars of election irregularities, intimidation and violation in paragraph 8 (a) - (q) of the plaint. The plaintiff is adamant that the results of the said elections in Chemamul Zone that declared the 1st Defendant as the director-elect should be cancelled and fresh elections done.
 4. In response, the 1st, 2nd & 3rd Defendants three replying affidavits by Isaiah Langat, William Chepkwony and Cosmas Korir, respectively. The Defendant's case is that the elections in question were held pursuant to a court order issued by the High Court sitting in Nairobi in Constitutional Petition *no. E254 of 2020* (Constitutional Petition *no. E243 of 2020* & E083 of 2021), the said order specifically directed that smallholder tea factories conduct their Directors' elections by the end of June, 2024. The Defendants conceded that the elections commenced at about 3.00 P.M on 28th June, 2024 owing to logistical challenges suffered by the 2nd Defendant (IEBC) in distribution of voting materials courtesy of the so called "Gen Z Protests" that crippled co-ordination of activities between its headquarters in Nairobi and the subject electoral areas. The elections commenced about 3.00 P.M on 28th June, 2024, upon a consensus reached between all the contestants and other stakeholders including but not limited to, agents of the 4th Defendant being the industry regulator. Moreover, that it was imperative to have the consensus to proceed with the elections, the delay notwithstanding as there was need to abide by the timelines set out by the High Court in Constitutional Petition *no. E254 of 2020*. Overall, the Defendants contend that the Plaintiff's assertions are not backed by any evidence, and that the elections held on 28th June, 2024, were peaceful, credible, free and fair in spite of the various logistical challenges posed by the prevailing political situation in the country, at the time. The Defendants contend that the Elections Manual clearly provided for the membership of the Disputes Resolution Committee and gave an elaborate procedure and clear timelines for purposes of lodging, hearing and determination of disputes which the Plaintiff disregarded.
 5. This court issued directions that the suit be dispensed by way of affidavit evidence and submissions.
 6. David Kimutai Too, the plaintiff on his part, filed a sworn affidavit dated 31st July, 2024. He avers that he applied to vie for directorship in the 2024 polls but was disqualified by the mere fact that he



holds two grower numbers and that he made efforts to present a formal complaint. He avers that he wrote a letter of complaint challenging refusal by the IEBC to clear him to contest for directorship elections on 28th June, 2024 to the chairman of the elections dispute resolution committee. He avers that the vague nature of the clauses of the election manual setting up the dispute resolution mechanism provided robust grounds to delay and/or frustrate dispute resolution. He further avers that upon being barred from vying, he opted to support the candidate of his choice and was subsequently appointed as a polling centre agent at Kiptome Polling Station for one Ezekiel Cheruiyot. He avers that on the material day tea growers started casting their votes at around 4PM when polling materials arrived at the polling centre and that Chememul Electoral Zone has more than 5,000 registered growers who are eligible to vote, however, 2,245 registered growers voted on 28th and 29th June, 2024 owing to the delay in polls and many including women and members of the Seventh Day Adventist Church failed to turn up to cast their votes. He avers that as a polling centre agent he witnesses several anomalies that affected the final result including but not limited to the predetermination of candidates, lack of voter verification, anomalies in the voter register, campaigning of election day, presence of provincial administration in the polling centres thereby intimidating voters and a vague dispute resolution mechanism. He avers that Ezekiel Cheruiyot the aspirant who lost the elections also swore an affidavit citing irregularities and election malpractices that resulted in a flawed election. He further avers that the affidavit is in support of the application for orders to declare the elections in Chemamul Electoral Zone of Momul Tea Factory PLC conducted by the 2nd, 3rd and 4th defendants as a sham, marred with irregularities and election malpractice and thereby nullify the election of the 1st Defendant and order a fresh election in Chemamul Zone.

7. The Defendant's case was further supported by the affidavits of evidence of the 1st Defendant, Isaiah Kipkoech Langat, William Chepkwony, the 3rd Defendant's Company Secretary both sworn on 27th August, 2024 and one by the Returning Officer namely, Cosmas Korir.
8. Isaiah Kipkoech Langat the 1st respondent avers that he was elected as a director of the 3rd defendant pursuant to elections held on 28th June, 2024. He avers that the elections commenced at about 3PM on 28th June, 2024 owing to logistical challenges suffered by IEBC in distribution of voting materials on the account of Gen Z Protests that crippled coordination of activities between its headquarters in Nairobi and the subject electoral areas. He avers that the elections commenced at 3PM on 28th June, 2024 upon a consensus reached between all the contestants and stakeholders. He avers that they were advised by agents of IEBC that it was imperative to have consensus to proceed with the elections as there was need to abide with the timelines set out in the High Court Constitutional Petition [*No. 254 of 2020*](#). He avers that contrary to the plaintiff's assertions that the elections held on 28th June, 2024 were credible, free and fair in spite of the various logistical challenges posed by the prevailing political situation in the country, at the time. He avers that all contestants were satisfied with the results as is evident from the election declaration forms which were all duly signed by the contestants' respective agents and that no complaint was ever lodged by any aggrieved contestant as required under regulation 8 of the elections manual. He avers that the instant suit is incompetent for want of capacity on the plaintiff part noting he was neither a contestant in the said election nor submitted any form of authority to sue or otherwise bring this claim on a representative capacity.
9. William Chepkwony, the 3rd Defendant's Company Secretary filed an affidavit. He avers that the election exercise was conducted on 28th June, 2024, pursuant to a court order that specifically directed that smallholder tea factories conduct their directors' elections by the end of June, 2024. He avers that he is aware that the election manual for election of directors for small holder directors provides a clear mechanism for dispute resolution and that the said elections manual is a public record duly availed in the Tea Board of Kenya's website. He avers that the elections manual, more so regulation 7 provides a detailed procedure for handling complaints. He avers that this court ought to take cognisance of the



fact that no contestant lodged any complaint or suit following the 1st Defendant's triumph as Director Elect representing the 3rd Defendant in Chemamul Electoral Zone.

10. Cosmas Korir a duly appointed Returning Officer for Momul Tea Factory Limited in Kericho County authorised by IEBC, the 2nd defendant herein. He avers that he is aware that the elections in question were originally scheduled to commence at 7AM and conclude at 3PM on the 28th June, 2024. He avers that the elections commenced later than initially scheduled due to logistical challenges as a result of the Gen Z Protests and that the said delay was communicated to all parties. He avers that elections commenced at 3PM on 28th June, 2024 and 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 special priority was given to members of the Seventh Day Adventist Church, women and the elderly, to vote early thereby mitigating the impact of the delay. He avers that during the said elections, he and other presiding officers worked tirelessly to ensure that all the procedural and legal requirements were strictly adhered to and categorically denied the occurrence of any irregularities or malpractice in the conduct of the said elections. He avers that the presence of administrative police officers during the elections was in line with IEBC Policy and for the purpose of providing security and maintaining law and order during the conduct of the elections.
11. The parties filed their written submissions which this court has duly considered.
12. The plaintiff filed his submissions and contended that the application to contest for directorship and clearance was riddled with influence by both internal and external factors and as a result he was barred from vying for directorship. The plaintiff contended that based on the scanty information in the election manual, the dispute resolution mechanism envisaged in the manual was untenable. The plaintiff contended that the 2nd defendant did not explicitly set up a formal office and dispute resolution committee as envisaged in the elections manual and therefore upon being denied the opportunity to vie, he wrote a letter of complaint and attempts to reach out to the dispute resolution committee were futile.
13. The plaintiff urged this court to find that the elections of the director for Chemamul Electoral Zone were marred with irregularities from nomination to the casting of votes and therefore declare the same as a sham and have the election results nullified. The plaintiff cited the Ugandan case of Joy Kabatsi Kafura v. Anifa Kawooya & Another, Election Petition No 25 of 2005 (unreported) where the court held that: "An election is a process encompassing several activities from nomination of candidates through to the final declaration of the duly elected candidate. If any one of the activities is flawed through failure to comply with the applicable law, it affects the quality of the electoral process, and subject to the gravity of the flaw, it is bound to affect the election results at every polling station. If any declaration is invalid by reason of non-compliance with the applicable law, it affects the quality and result of the electoral process."
14. The plaintiff conceded that he was aware that where there is a clear dispute resolution mechanism, the same should be followed. The plaintiff cited the case of Kimani Wanyoike v Electoral Commission & another [1995] eKLR where the court held as follows; "where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed." However, the plaintiff contended that in the impugned 2024 elections, the dispute resolution mechanism was not cohesive, he was unaware of the members constituting the dispute resolution committee and the location of the office of the said members.
15. The plaintiff submitted that the elections were marred with irregularities and electoral malpractices. The plaintiff contended that non compliance with the provisions and principles of the electoral law grossly affected the results of the elections. He relied on article 81 of the Constitution which sets out



general principles of the electoral system and case of James Omingo Magara v Manson Onyongo Nyamweya & 2 others [2010] eKLR where Justice Musinga as he then was observed as follows; “The court has to consider whether the grounds raised in the petition significantly challenge the entire electoral process and lead to a conclusion that the process was not transparent, free or fair. It is not just a question of who got more votes than the other. It cannot be said that the end justifies the means. In a democratic election the means by which a winner is declared plays a very important role. The votes must be verifiable by the paper trail left behind, it must be demonstrated that there existed favourable circumstances for a fair election and that no party was prejudiced by an act or omission of an election official.”

16. The plaintiff submitted the 1st, 2nd, 3rd and 4th respondents jointly caused irregularities in the elections held on 28th June, 2024 and therefore this court should find that the said elections were marred with irregularities and grant the orders in the plaint dated 12th July, 2024.
17. The 1st, 2nd and 3rd 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 Muthiga & another v Samuel Munga 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 maintained that the plaintiff did not submit to this process before approaching this Court. 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 is evident from the pleadings submitted by the plaintiff that he instituted this suit in a representative capacity albeit without an authority to sue or an indication of the class of persons he seeks to represent. The defendants pointed out that the instant suit is purely a civil suit as opposed to a constitutional petition where the locus to sue is greatly expanded. The defendant cited the case of Savala & another v Ndanyi (Environment and Land Case Civil Suit 248 of 2021) [20 22] KEELC 2536 (KLR) (5 July 2022) (Ruling) where the court citing the Court of Appeal’s decision in Chalicha Farmers Co-operative Society Limited v George Odhiambo & 9 others , among others, held: “From the foregoing, it is quite clear that a party in a proceeding cannot purport to appear, plead and act on behalf of others until and unless he is so authorised to do so in writing and the authority is



filed in such a proceeding. To my mind therefore, a statement in an affidavit that one has the authority of the co-plaintiffs or co-defendants is not enough. Such an authority, properly signed by the party giving the authority, must be filed in the proceeding”. The defendants reiterated that the suit herein is incompetent for want of capacity on the plaintiff’s part noting that he was neither a contestant in the said election nor has he submitted any form of authority to sue or otherwise bring this claim on a representative capacity.

19. The defendants contended that the plaintiff suit seeks the nullification of the KTDA small holder directors’ elections held on 28th June, 2023 on account of the following alleged irregularities and malpractices and cited the case of John Kiarie Waweru v Beth Wambui Mugo & 2 Others (2008) eKLR where the Honourable Court stated as follows regarding the standard of proof in election matters; “As regards the standard of proof which ought to be discharged by the petitioner in establishing allegations of electoral malpractices, there is consensus by electoral courts that generally, the standard of proof in electoral petition cases is higher than that applicable in ordinary civil cases... The standard is higher than proof on a balance of probabilities but lower than the standard of proof beyond reasonable doubt... Allegations of electoral malpractices like for instance bribery require higher proof.” The defendants submitted that the case herein is one riddled with mere allegations which the plaintiff has not adduced any evidence to support it.
20. The defendants contended that it is not disputed that the elections in fact started at 1500 HRS and not at 0700 HRS as earlier scheduled. The defendants reiterated that they preferred a logical explanation that this delay was occasioned by the “Gen-Z protests” which severely impacted on the printing and distribution of election materials. The defendants urged this Court to take judicial notice of the fact that the country was embroiled in a political turmoil courtesy of the said protests which is a matter of general notoriety. The defendants further urged this Court to take into consideration the fact that this inconvenience was not particular and specific to Chemamul Zone, the electoral unit in the instant case but that it affected almost all similar elections across the country.
21. The defendants urged this Honourable Court to consider the fact that the elections in fact witnessed a significant turnout of 67% of registered farmers, indicating a broadly participatory process. The defendants reiterated that in view of the great voter turnout and the lack of substantial evidence showing the alleged irregularities and malpractice and how they affected the validity of the elections, the defendants therefore urged this Court to make a finding that the plaintiff’s claims do not warrant the reliefs sought.
22. The defendants urged this court to take cognizance of the fact that the elections were being 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 tea factories ought to conduct their directors’ election by the end of June, 2024.
23. The defendants contended that all the contestants were satisfied with the results as is evident from the election declaration forms which were all duly signed by the contestants’ respective agents. The defendants urged this court to uphold the resounding will of Chemamul Zone Tea Growers by dismissing the plaintiff’s allegations which were unsubstantiated.
24. This court has considered the pleadings, affidavit evidence and submissions by the parties and the sole issue for determination is whether this court is seized with jurisdiction to hear and determine this suit, in view of the doctrine of exhaustion.
25. The plaintiff conceded that he was aware that where there is a clear dispute resolution mechanism, the same should be followed and cited the case of Kimani Wanyoike v Electoral Commission & another [1995] eKLR where the court held as follows; “where there is a clear procedure for the redress of any



particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.” However, the plaintiff contended that in the impugned 2024 elections, the dispute resolution mechanism was not cohesive, he was unaware of the members constituting the dispute resolution committee and the location of the office of the said members. The plaintiff therefore argued that the instant suit is properly before this Court.

26. The Defendants contended that the Elections Manual clearly provided for the membership of the Disputes Resolution Committee and gave an elaborate procedure and clear timelines for purposes of lodging, hearing and determination of disputes which the Plaintiff disregarded. 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 plaintiff has not demonstrated any efforts to invoke the internal dispute resolution mechanisms.
27. This court therefore finds that it does not have jurisdiction to entertain the instant suit, firstly, because it is a commercial dispute between the shareholders and their company and the election of the 3rd Defendants directors is an internal affair of the company and this court cannot adjudicate on the matter. In the case of *Paul Mogaka Magoma v Gianchore Tea Factory Co & 2 others* [2016] eKLR the court held that companies, be they private or public, are governed by the provisions of the *Companies Act* and the election of directors are internal affairs of companies that are usually regulated by the rules embedded in the articles and memorandum of association. Secondly, this court lacks jurisdiction because the plaintiff has not exhausted the internal dispute resolution mechanism provided in the Elections Procedure Manual 2024 before approaching the court. The Court of Appeal stated in *Nakuru Civil Appeal No. 119 of 2017 Public Service Commission & 2 Others vs. Eric Cheruiyot & 16 Others consolidated with Civil Appeal No. 139 of 2017 County Government of Embu & Another vs. Eric Cheruiyot & 15 Others* (unreported) in a decision rendered on 8th February, 2022 on the doctrine of jurisdiction in general as follows: - “Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows: By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
28. There exists an election dispute mechanism in the 3rd 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. Even assuming that the suit is properly before this court, I am not convinced that the Plaintiff proved his case to the required standards. Having considered the evidence, it is that the Elections held on 29th June, 2024 were free and fair. The irregularities pointed out would not have affected the validity of those Elections.



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

E. K. Korir for Plaintiff

Willy & Koech for the Defendants

