



**Langat v County Government of Bomet (Civil Appeal 27 of 2018)  
[2023] KEHC 2431 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2431 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL 27 OF 2018  
RL KORIR, J  
MARCH 29, 2023**

**BETWEEN**

**ELIZABETH C. LANGAT ..... APPELLANT**

**AND**

**THE COUNTY GOVERNMENT OF BOMET ..... RESPONDENT**

*(Being an Appeal from the Judgment of the Principal Magistrate, P. Achieng in the Principal Magistrate's Court at Bomet, Civil Suit Number 30 of 2017 delivered on 22nd November 2018)*

**JUDGMENT**

1. The Plaintiff (now Appellant) was an employee of the Defendant (now Respondent) and served as the County Executive Committee (CEC) Member in charge of Public Health and Environment and later as the CEC member in charge of Agriculture and Fisheries.
2. The Appellant sued the Respondent for Special Damages of Kshs 3,090,012 that was a reimbursement of monies used by the Appellant for hiring, fuelling and servicing Motor Vehicle Registration Number xxxx.
3. In its Judgment delivered on November 22, 2018, the trial court found the Appellant had failed to prove her case against the Respondent and dismissed her case with costs to the Respondent.
4. Being dissatisfied with the Judgment of the trial court, the Plaintiff/Appellant appealed to this court through the Memorandum of Appeal dated December 20, 2018. She raised the following grounds:-
  - I. That the learned trial Magistrate erred in law and in fact in failing to acknowledge that the Respondent herein owed the Appellant a duty to allocate her an official car for use in discharging her official duties but confiscated the same and made no replacement.



II. That the learned trial Magistrate erred in law and in fact in failing to consider the fact that the Respondent herein breached the duty to allocate the Appellant herein a replacement car for use in discharging her official duties.

III. That the learned trial Magistrate erred in law and in fact in failing to appreciate the fact that the Respondent herein has a duty to reimburse the Appellant for the expenses she incurred in hiring a replacement car for use to discharge her official duties as she could not procure when she had a car meant for her but was denied and left with no choice.

5. The duty of the 1<sup>st</sup> appellate court is to re-evaluate and re-examine the evidence of the trial court and come to its own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of *Abok James Odera t/a AJ Odera & Associates vs John Patrick Machira t/a Machira & Co Advocates (2013) eKLR.*

### **The Plaintiff's/appellant's Case**

6. Through the Complaint and her evidence in the trial court, the Appellant stated that she was employed as a County Executive Member of the Respondent in charge of Public Health and Environment. That by virtue of her employment and position, she was allocated an official vehicle by the Respondent ie Motor Vehicle Registration Number xxxx (xxxx) for her official use.
7. It was the Appellant's case that the vehicle was involved in a road accident on March 19, 2015 on her way to attend an official function at KICC in Nairobi. That as a result of the accident, the motor vehicle was damaged and could no longer be used. It was the Appellant's further case that the motor vehicle was then sent for repairs and that she was not allocated another vehicle for her official use.
8. The Appellant stated that in the absence of an official vehicle, she resorted to hiring a vehicle using her personal funds to aid her in execution of her official duties. That she hired the said Motor Vehicle Registration Number xxxx from Jesip Investment on a quarterly basis from March 19, 2015 to September 2016 where she paid a total of Kshs 2,520,000/=. The Appellant further stated that she used a total of Kshs 570,012/= for fuel and service.
9. The Appellant prayed for reimbursement from the Respondent of Kshs 3,090,012/= which she used to hire, fuel and service Motor Vehicle Registration Number xxxx.

### **The Appellant's Submissions.**

10. The Appellant submitted that courtesy of a circular by the Salaries and Remuneration Commission's circular to all County Secretaries dated August 20, 2013, she was entitled to an official motor vehicle. That she was allocated an official motor vehicle registration number xxxx (xxxx) which was then later involved in a road accident.
11. It was the Appellant's submission that when the vehicle was grounded and being repaired, she was expected to diligently carry out her official duties without fail. That the Respondent was obligated to provide her with a monthly commuter allowance of Kshs 20,000/= as per the aforementioned circular. It was the Appellant's further submission that her official motor vehicle was satisfactorily repaired and reallocated to her only for it to be taken back by the Respondent.
12. The Appellant submitted that the Chief Officer of the Respondent was notified of her intention to hire a motor vehicle. She relied on *Republic v County Secretary Migori County Government & another [2018] eKLR.*



13. It was the Appellant's submission that her entitlement to an official motor vehicle had been budgeted for and that she was not introducing or seeking approval for something that had not been budgeted for. That she only sought reimbursement of funds as her official motor vehicle had been forcefully repossessed after repairs for no reason.
14. The Appellant submitted that she hired the motor vehicle to aid her carry out her official duties as required by the law and that she was entitled to the reimbursement as she incurred and paid the expenses from her own pocket. That the process through which the motor vehicle was hired was fair, equitable, transparent and cost efficient as required by Article 227 of the Constitution. The Appellant further submitted that the Respondent could not procure what it already had.

#### **The Defendant's/respondent's Case.**

15. The Defendant (now Respondent) filed its Defence in the trial court on April 13, 2017. The Respondent denied the occurrence of the road accident and the allegations of vandalism of the subject motor vehicle. The Respondent stated that the Appellant hired a motor vehicle for her use without its express authorization and in blatant violation of the provisions of the Public Finance Management Act and the Public Procurement and Asset Disposal Act.
16. It was the Respondent's case that the procurement of goods and services for a county government or any public entity was regulated by the Public Procurement and Asset Disposal Act. That under Section 4 of the Public Procurement and Asset Disposal Act, state organs and public entities were bound by the Act in respect of procurement planning, processing and contract management.
17. The Respondent stated that under Section 143 of the Public Procurement and Asset Disposal Act, the accounting officer was the only person responsible for the preparation of contracts and that the contract entered into by the Appellant was illegal ab initio. That Section 135 of the same Act stated that such a contract shall be confirmed through a signature of a contract document between the parties and shall be signed by the accounting officer or an officer authorized in writing by the accounting officer. The Respondent stated that in the instant case, the accounting officer did not append his/her signature as required by the law.
18. It was the Respondent's case that Part IX of the Public Procurement and Asset Disposal Act provided various methods of procurement and that the Appellant's choice of car hire was in gross violation of the methods provided in law. It was the Respondent's further case that it did not receive any request for procurement of car hire services.
19. The Respondent stated that Article 227 of the Constitution obligated the government to undertake a procurement process in a transparent manner. That what the Appellant did was a violation of the aforementioned legal position.

#### **The Respondent's Submissions.**

20. The Respondent submitted that it was a government entity which had clear procedures on procurement of goods and services pursuant to the Public Procurement and Asset Disposal Act. That this Appeal was meant to use this court to circumvent the position on the law on procurement and if the orders sought were granted it would amount to an illegality and open a floodgate for the misuse of public funds by public officials.
21. It was the Respondent's submission that the purported expenses by the Appellant had financial implications on its budget yet it was not authorized by the Constitution. It relied on Mugoye & Associates Advocates vs Kiambu County Assembly Speaker (2018) eKLR. It was the Respondent's



further submission that the trial court's decision was grounded on the clear provisions of the law on procurement of public goods and services.

22. The Respondent relied on Sections 3, 53, 196 and 196(3) of the [Public Procurement and Asset Disposal Act](#) in its submissions.
23. I have read through and considered the Record of Appeal dated May 6, 2022, the Appellant's Written Submissions dated September 23, 2022 and the Respondent's Written Submissions dated December 15, 2022 and the only issue for determination was whether this court has jurisdiction to determine this matter.
24. The issue of jurisdiction was not raised by the parties at all. That notwithstanding, it is trite law that a court must have jurisdiction to hear and determine a suit from the very beginning. Without it, the court has no option other than to down its tools. The Supreme Court in the case of [R v Karisa Chengo \[2017\] eKLR](#), held that:-

' By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of 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 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 both these characteristics where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.'

25. Further, in [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others \[2012\] eKLR](#), the Supreme Court held that:-

' A Court's jurisdiction flows from either the [Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the [Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.'

26. It was not in dispute that the Appellant was employed by the Respondent as the County Executive Committee Member in charge of Public Health and Environment. The dispute between the Appellant and the Respondent was for the reimbursement of money that the Appellant used to hire a motor vehicle after her official motor vehicle had been recalled by the Respondent. The Appellant being a CEC member of the Respondent was allocated an official motor vehicle to assist her discharge her duties. In essence therefore, the dispute arose from a breach of her employment terms.

27. Article 162 (2) (a) of the [Constitution](#) of Kenya provides that:-

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations.

28. The [Employment and Labour Relations Court Act](#) No 20 of 2011 is defined as an Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes. Section 12 (1) of the Act stipulates the jurisdiction of the Employment and Labour Relations Court as follows:-

The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the [Constitution](#) and the provisions of this Act or any



other written law which extends jurisdiction to the Court relating to employment and labour relations including —

(a) Disputes relating to or arising out of employment between an employer and an employee.

29. In interpreting Article 162 of the Constitution of Kenya, the Supreme Court of Kenya in Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) (2019) eKLR expressed itself as follows:-

' In that context, the purposive reading and interpretation of Article 162 together with Article 165(5) of the Constitution leaves no doubt that the original and appellate jurisdiction over disputes related to Employment and Labour Relations was transferred from the High Court to the Employment and Labour Relations Court. Prima facie that meant that any dispute subject to any other statutory or constitutional limitations emanating from the dispute contemplated under Article 162(2) supra must be determined by the Employment and Labour Relations Court.

30. Article 165 (5) of the Constitution of Kenya provides that:-

The High Court shall not have jurisdiction in respect of matters-

- (a) Reserved for the exclusive jurisdiction of the Supreme Court under this Constitution or
- (b) Falling within the jurisdiction of the courts contemplated in Article 162 (2).

31. This position was aptly expounded on by the Supreme Court in Albert Chaurembo Mumba & 7 others (supra) where it stated:-

' It is clear to us that Article 165(5) of the Constitution ousts certain questions from the jurisdiction of the High Court on matters of employment and labour relations, and matters of environment, use, occupation and title to land by providing thus:

'(5) The High Court shall not have jurisdiction in respect of matters— (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) Falling within the jurisdiction of the courts contemplated in Article 162 (2).'

The clear wording of the debarment of the High Court by the Constitution is that 'shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts under Article 162(2)'. On the other hand the ouster of its Jurisdiction under section 12(1) of the primary statute is that the Labour Relations and Employment Court 'shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—disputes relating to or arising out of employment between an employer and an employee;

Had the framers of the Constitution intended to restrict the power of Parliament to enact legislation enlarging the scope of jurisdiction of the High Court and at the same time limiting the jurisdiction of the Employment and Labour Relations Court with respect to certain disputes relating to employment and labour relations, it would have done so in express terms in the same way that the High Court is expressly barred, under Article 165(5),



from exercising jurisdiction in respect of matters 'falling within the jurisdiction of the courts contemplated in Article 162(2).'

32. Similarly, the Supreme Court in *Republic vs Karisa Chengo* (supra) addressed itself on the issue of distinct jurisdiction of the High Court and the specialized courts established under Article 162(2)(3). It stated:-

' It is against the above background, that Article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of the Constitution intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts.

Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court's operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from the Constitution, or legislation (see *In Re the Matter of the Interim Independent Electoral Commission, at paras. 29 and 30; and Samuel Kamau Macharia and Another v Kenya Commercial Bank and Two Others, Sup Ct Civil Application No 2 of 2011* [para 68]). In this instance, the jurisdiction of the specialized Courts is prescribed by Parliament, through the said enactment of legislation relating, respectively, to the ELC and the ELRC.

In addition to the above, we note that pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of Courts, with *suis generis* jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal's decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.'

33. It is patently clear to me from the above precedents and from the provisions of the Constitution stated above that the High Court and the Employment and Labour Courts, though of the same hierarchical structure, exercise different and distinct jurisdictions. As already stated above, the dispute between the Appellant and the Respondent arose from a breach of employment terms. The Appellant claims that the Respondent failed to give her a vehicle to carry out her duties which forced her to resort to hiring one. Her claim was rejected by the employer leading to the suit. I am clear therefore that the dispute falls under the exclusive jurisdiction of the Employment and Labour Relations Court and not this court.
34. In the end, I find that I have no jurisdiction to determine the Appeal. Without jurisdiction, I must down my tools with the consequence that I decline to entertain the merits of the Appeal.
35. The Appeal dated December 20, 2018 is struck out. I decline to award costs as the parties failed to litigate the matter in the right court.

Orders accordingly.



**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 29<sup>TH</sup> DAY OF MARCH,  
2023**

.....

**R. LAGAT-KORIR**

**JUDGE**

Judgment delivered in the presence of Mr. Langat for the Respondent, Siele (Court Assistant) and in the absence of M/S Otieno for the Appellant.

