



**Wendot v Central Rift Valley Water Works Development Agency & 5 others; Oruma (Interested Party) (Constitutional Petition 1 of 2023) [2023] KEHC 2573 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2573 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CONSTITUTIONAL PETITION 1 OF 2023  
HK CHEMITEI, J  
MARCH 28, 2023**

**BETWEEN**

**HOSEA KIPYEGON WENDOT ..... PETITIONER**

**AND**

**CENTRAL RIFT VALLEY WATER WORKS DEVELOPMENT  
AGENCY ..... 1<sup>ST</sup> RESPONDENT  
CABINET SECRETARY MINISTRY OF WATER, SANITATION &  
IRRIGATION ..... 2<sup>ND</sup> RESPONDENT  
STATE CORPORATION ADVISORY COMMITTEE ..... 3<sup>RD</sup> RESPONDENT  
BONFACE KAMANGA MUHIA ..... 4<sup>TH</sup> RESPONDENT  
JULIUS KAMAU MUTHANWA ..... 5<sup>TH</sup> RESPONDENT  
CYNTHIA JEROTICH KIPCHILAT ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**SAMUEL KIPAMPI ORUMA ..... INTERESTED PARTY**

**RULING**

1. The petitioner herein filed this petition as well as an application dated 7<sup>th</sup> February 2023 seeking among others interim orders against the respondents jointly and severally. The court certified the same urgent and ordered the respondents to be served for inter partes hearing on 14<sup>th</sup> February 2023.
2. When the matter came up on the said date there was no representation on the part of the respondents and the court granted interim orders as prayed by the petitioner. What followed thereafter were flurry of applications by the respondents as well as the petitioner.



3. The 1<sup>st</sup> respondent filed an application dated 20<sup>th</sup> February 2023 seeking to have the orders set aside and in the meantime stay of the same. Contemporaneously, it filed a preliminary objection questioning the jurisdiction of this court. It was its view that the issue at hand was best suited to be handled by the Labour Relations Court (hereinafter referred to as Labour Court).
4. The proposed interested party on 14<sup>th</sup> February 2023 filed an application seeking to be enjoined as a party to this petition.
5. The petitioner on 20<sup>th</sup> February 2023 filed another application in which it sought to have the orders of 14<sup>th</sup> February 2023 enforced by the police seeing that there was no compliance by the respondents.
6. On 8<sup>th</sup> March 2023 the petitioner filed another application seeking to have the intended interested party be cited for contempt of court.
7. It is worthy to note that all the parties have responded to the applications either by way of replying affidavits and or grounds of opposition.
8. The court has perused the rival affidavits and in view of the preliminary objection challenging the jurisdiction of the court the same as a matter of priority ought to be determined. It must be noted that the court had earlier directed the same to be heard simultaneously with the applications. However, and now that all the parties have filed their responses and their grounds of opposition as well as other pleadings, it is the wisdom of this court that the said preliminary objection be determined first.
9. This position is buttressed by the now famous authority of *Owners of the Motor Vessel "Lillian's" v Caltex oil (Kenya) Ltd* (1989) eKLR, where the eminent learned judges stated inter alia;

“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance 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 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 cognisance, 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”

See Words and Phrases Legally defined – Volume 3: I – N Page 113

It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.”

10. The said preliminary objection dated 22<sup>nd</sup> February 2023 states that “this court lacks jurisdiction to deal with the matter in issue in this case pursuant to Article 162 of the *constitution* and section 4 as read with Section 12 of the *Employment and Labour Relations Court Act* (No.20 of 2021.)”
11. The said objection was supported by the replying affidavit of Alice Muthoni Wahome the second respondent’s Cabinet Secretary who deponed that the matter felt squarely on the jurisdiction of the Labour court. That the issue between the petitioner had to do with his employment contract and subsequent termination where he even collected his terminal dues.
12. The intended interested party as well supported the objection by filing a similar notice dated 8<sup>th</sup> March 2023. The only addition is that the matter was *res judicata* having been dealt with in Nakuru ELRC Petition No. E014 OF 2021 between *Joel Akinga Ondieki v. Central Rift Valley Water Works Agency & 5 Others*.
13. The court having as stated above been seized of all the pleadings herein is of the consideration that the matter ought to be determined by Labour court. This is for the following reasons.
14. First of all, looking at the letter of appointment dated 11<sup>th</sup> April 2018, from the 1<sup>st</sup> respondent to the petitioner, the same clearly spells out the terms of the contract. The same is marked as annexure “HKW A “in the supporting affidavit.
15. The same goes with the request for the renewal of contract dated 30<sup>th</sup> October 2020, annexure “HKW B” and all the subsequent annexures.
16. Article 162 and 165 of the *constitution* provides as hereunder in respect to the constituting of the two courts. Thus Article 162 states;
  - (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
  - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
    - (a) employment and labour relations; and
    - (b) the environment and the use and occupation of, and title to, land.
  - (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
  - (4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.”

“High Court



- (1) There is established the High Court, which—
  - (a) shall consist of the number of judges prescribed by an Act of Parliament; and
  - (b) shall be organised and administered in the manner prescribed by an Act of Parliament.
- (2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.
- (3) Subject to clause (5), the High Court shall have—
  - (a) unlimited original jurisdiction in criminal and civil matters;
  - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
  - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
  - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
    - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
    - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
    - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
    - (iv) a question relating to conflict of laws under Article 191; and
  - (e) any other jurisdiction, original or appellate, conferred on it by legislation.
- (4) Any matter certified by the court as raising a substantial question of law under clause (3)(b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.
- (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).
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in



clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

17. It is apparent that any matter relating to the question of employment is clearly spelt out that it has to be handled by the Labour court.
18. Looking at the prayers in the main petition, the petitioner alleges breaches of his constitutional rights by the respondents jointly and severally.
19. The court in *USIU V. AG* (2012) eKLR stated as follows;

“In relation to the jurisdiction of the labour Court to adjudicate over violations of fundamental rights and freedoms, the court further stated, “Section 157(2) confirms that the Labour Court has concurrent jurisdiction with the High Court in relation to alleged or threatened violations of fundamental rights entrenched in chapter 2 of the constitution and arising from employment and labour relations, any dispute over the constitutionality of any executive or administrative act or conduct by the state in its capacity as employer and the application of any law for the administration of which the minister is responsible. The purpose of this provision is to extend the jurisdiction of the Labour Court to disputes concerning the alleged violation of any right entrenched in the Bill of Rights which arise from employment and labour relations, rather than to restrict or extend the jurisdiction of the High Court. In doing so, section 157(2) has brought employment and labour relations disputes that arise from the violation of any right in the Bill of Rights within the reach of the Labour Court. This power of the Labour Court is essential to its role as a specialist court that is charged with the responsibility to develop a coherent and evolving employment and labour relations jurisprudence. Section 157(2) enhances the ability of the Labour Court to perform such a role. Therefore, section 157(2) should not be understood to extend the jurisdiction of the High Court to determine issues which (as contemplated by section 157(1)) have been expressly conferred upon the Labour Court by the LRA. Rather, it should be interpreted to mean that the Labour Court will be able to determine constitutional issues which arise before it, in the specific jurisdictional areas which have been created for it by the LRA, and which are covered by section 157(2)(a), (b) and (c).”
20. Evidently the Labour court for all intent and purposes has the necessary jurisdiction just as this court to determine any breach of anybody’s constitutional rights. In essence therefore the complains raised by the petitioner herein can as well be dealt with by the Labour court.
21. The issue of *res judicata* raised by the intended interested party for now cannot be dealt with for the simple reason that the said party was yet to be admitted into this petition and more importantly the Labour court which made the said decision will still have the opportunity to look into it.
22. What then is the way forward? I think, and rightfully so, that this matter ought to be canvassed by the Labour court. Nothing is lost to all the parties. The constitutional rights of the petitioner which he alleged were breached will be dealt with by the said court which is competent enough. The applications on record which this court was yet to delve into shall be litigated by the said court.
23. In the premises, this petition together with the pending applications are transferred to the Employment and Labour Relations Court at Nakuru for hearing and determination and or further directions.
24. The interim orders earlier issued are hereby discharged and or set aside.
25. Costs shall await the outcome of the petition as shall be determined by the said court.



DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 28<sup>TH</sup> DAY OF MARCH 2023.

H. K. CHEMTEL.

JUDGE

