



**Ngeny v County Government of Kericho; Kericho Water and Sanitation Company Limited (Interested Party) (Constitutional Petition E010 of 2023) [2023] KEHC 26380 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26380 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CONSTITUTIONAL PETITION E010 OF 2023  
JR KARANJA, J  
NOVEMBER 30, 2023**

**BETWEEN**

**ERIC KIPKURUI NGENY ..... PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF KERICHO ..... RESPONDENT**

**AND**

**KERICHO WATER AND SANITATION COMPANY LIMITED .... INTERESTED PARTY**

**RULING**

1. The ruling is on the Preliminary Objection dated and filed herein on 24<sup>th</sup> July 2023, by the respondent and interested party, the County Government of Kericho and Kericho Water and Sanitation Company Limited respectively, against the petitioner, Erick Kipkurui Ngeny. The objection essentially touches on the jurisdiction of this court to deal with this petition and all that appertains thereto even though additional grounds have been invoked such as the petition being “sub-judice” there being another petition on the same subject matter filed at the Employment and Labour Relations Court (ELRC) being Kericho ELRC Petition E005 of 2023. That, the petition offends the mandatory provisions of section 82 and 121 of the *Water Act* 2016 and is bad in law, incompetent, frivolous, vexatious, fatally defective and an abuse of the court process.
2. The petitioner, a resident of Kericho County describing himself as a public spirited individual champion of constitutional adherence and the rule of law filed this petition on 15<sup>th</sup> July 2023 against the respondents public organs accusing them of violating the *constitution* and the *Fair Administrative Actions Act* on account of the action taken by the respondent’s County Executive Members and County Secretary to issue a notice to the Managing Director of the Interested Party placing him on



administrative leave, an action deemed by the petitioner to be actuated by ulterior motives, intended to interfere with the management of the interested party and to take over its properties. In essence, the petitioner is aggrieved by the action taken by the respondent against a party not enjoined in this petition. He is, as it were, fighting somebody else's battles.

3. Be that as it may, the petitioner prays for declaratory orders pegged on the action taken by the respondents against the Chief Executive Officer or Managing Director of the Interested Party and while filing the petition he also filed a Notice of Motion dated 12<sup>th</sup> July 2023 seeking conservatory orders against the respondent restraining it from interfering in any manner with the management of the interested party, suspending of placing its Managing Director on administrative leave, dealing in the properties of the interested party by alienation or transfer on in any other manner interfering with the affairs of the interested party.
4. The Notice of Motion came before this court on 5<sup>th</sup> July 2023 for hearing "inter-parties". It was then that the respondent drew the attention of the court to the present preliminary objection having been filed objecting to the inter-locutory application as well as the petition in its entirety. The court therefore directed that the preliminary objection in as much as it touched on its jurisdiction to deal with this matter be heard prior to the hearing of the application. In addition, the court ordered that the "status-quo" be maintained and that parties be at liberty to file written submissions.
5. When the objection ultimately came up for hearing on the 29<sup>th</sup> November, 2023, the only submissions on record were those dated 22<sup>nd</sup> September 2023 and filed herein by the respondent on 25<sup>th</sup> September 2023, in support of the objection. Learned Counsel Mr. Brian Langat under instructions from Ken Ochieng & Co. Advocates appeared for the respondent.

The Interested Party, represented by learned counsel, Mr. Morata under instructions from Bett & Co. Advocates indicated that it did not wish to file any submissions as it was in support of the objection.

6. The Petitioner's counsel, said to be Mr. Geoffrey Langat from the firm of Farah & Co. Advocates did not appear at the hearing of the preliminary objection at any one time, but on the 29<sup>th</sup> November 2023, Learned Counsel M/s Jausiku, appeared and held his brief for purpose of seeking adjournment. The court upheld the objection thereto by the respondent and set the objection for ruling today.

As the position stands now, the preliminary objection is not opposed and turns on dismissal on that account and/or on the court sustaining and upholding the objection for being meritable on the basis of jurisdiction, a pure point of law.

7. As was remarked in the famous case of Owners of the Motor vessel "*Lillian S*" v *Caltex Oil (Kenya) Ltd* (1989)1KLR, jurisdiction is everything and a court must down its tools once it determines that it has no jurisdiction to deal with a matter. A court cannot therefore take upon itself to exercise a jurisdiction which it does not possess and if it does that its decision amounts to nothing.

In this court's opinion, given the circumstances leading to the petition it must of necessity divest itself of jurisdiction to deal with it for reasons that, firstly, the dispute revolves around internal management of a company acting within its powers and as a general rule courts will not interfere with the internal affairs of a company (read the Interested Party) (see, *Re-K Boat Service* (1998)eKLR unless the act complained of is "*ultra-vires*".

Under the *Water Act*, 2016, the interested party is classified as a water service provider. A party aggrieved by its decision may appeal to the Water Services Regulatory Board (WASNEB), the organ established under the *Water Act* with initial jurisdiction to hear any dispute under the Act.



Disciplinary process in any public or private companies are internal affairs which the court ought not interfere with in the absence of special circumstances.

Secondly, the notice alluded to in the petition relates to the so called administrative leave which is a matter of employment. Such matters fall within the jurisdiction of the Employment and Labour Relations Court rather than this court even if they touch on constitutional issues.

8. For all the foregoing reasons, the preliminary objection is hereby sustained and upheld to the extent that the Notice of Motion and the Petition both dated 12<sup>th</sup> July 2023 are hereby struck out and dismissed with costs to the respondent and the Interested Party.

Ordered accordingly.

**[DELIVERED, DATED AND SIGNED AT KERICHO THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2023.]**

**J. R KARANJAH**

**JUDGE**

