



REPUBLIC OF KENYA



KENYA LAW
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**Munialo v Lusweti Furaaha B.K.S & 4 others (Constitutional Petition
3 of 2019) [2022] KEHC 11675 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 11675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CONSTITUTIONAL PETITION 3 OF 2019**

SN RIECHI, J

JUNE 30, 2022

BETWEEN

PATRICK WANYONYI MUNIALO PETITIONER

AND

LUSWETI FURAHA B.K.S 1ST RESPONDENT

DICKSONK. KIRUI 2ND RESPONDENT

KENNEDY KILALI WEKESA 3RD RESPONDENT

NZOA WATER SERVICES CO. LTD 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The petitioner describes himself as a former Managing Director in the 4th respondent and the 1st respondent as a purported director in the 4th respondent while the 2nd respondent was the Company Secretary and the 3rd respondent the Technical Manager. The 4th respondent is described as a limited liability company and serving the counties of Bungoma and Trans Nzoia with clean water and the 5th respondent as the principal advisor to the government of Kenya.
2. The petitioner avers that he entered into an employment contract with the 4th respondent on 18/2/2014 to commence on 9/4/2014 for a renewable term of 5 years. Under the said contract, the petitioner was to provide strategic vision, planning and operational leadership to the company at an agreed salary of Kshs 220,000/= per month and evaluation would be done twice a year.
3. The petitioner avers that he served his employer diligently until by letter dated 8/1/2018, the employer purported to suspend him. He approached this court which made orders on 25/1/2018 barring the respondents from suspending, taking disciplinary action and or



terminating his employment. In disobedience of the order, the respondents suspended him on 1/2/2018 and dismissed him on 7/3/2018 and the 1st respondent assumed the position.

4. He states that the respondent put up an advertisement on 21/12/2018 to fill the petitioner's position while all along acting in contempt of the orders issued by the court. He avers that the respondents are in grave violation of the Constitution and violates the petitioner's rights and now seeks the following reliefs;
 - a. A declaration that the 1st and 2nd respondents' act of relieving the petitioner of his duties is a breach of his Constitutional rights under articles 22(1), 27(1)(2) and (3), 28, 35, 41(1), 43, 47 & 50(1) and chapter 6 in its entirety and the acts are null and void for all intents and purposes.
 - b. An order of certiorari to remove into this honourable court and quash the decision of the respondents of relieving the petitioner of his duties and illegally occupying his office as a managing director.
 - c. An order of mandamus compelling the respondents to reinstate the petitioner to his position and all benefits whereof.
 - d. An order of prohibition to remove into this honourable court and prohibit the respondents from occupying the 4th respondent and or appointing any fresh nominee for approval by the board of directors of the company.
 - e. In the alternative and without prejudice to prayer (d) cost and general damages for pain and suffering.
5. The petition is supported by the petitioner's affidavit in which he has largely reiterated the grounds in the petition.
6. The 1st, 3rd and 4th respondents filed an answer to the petition stating inter alia that the petitioner was dismissed on grounds of financial mismanagement and misappropriation of funds while serving at the 4th respondent which acts have been reported with the ethics and anti-corruption commission for action to be taken after a fair and legal process undertaken by the 4th respondents Board of Directors.
7. They state that the petitioner instituted Kisumu HCC 188 of 2018 seeking remedies of unfair dismissal and Bungoma High Court Judicial Review application 2 of 2018 which are still pending determination and the court is not therefore clothed with jurisdiction to hear and determine the matter herein. They therefore seek the dismissal of the petition.
8. By directions of this court, the petition was to be canvassed by way of written submissions. Only the respondents complied. They submit that the petitioner having filed Kisumu HCC 188 of 2018 and Kisumu ELRC 378 of 2018, and Bungoma J.R Applications 1 and 2 both of 2018 which are still pending shows that the petitioner is filing a multiplicity of suit contrary to the law. On jurisdiction, it is submitted that the subject matter herein fall within the mandate of the Employment and Labour relations Court.
9. Upon analysis of the petition, the first issue to be determined is the competence of the petition before this court in light of the fact that there are a number of suits between the parties on the subject matter vis a vis the jurisdiction of the Employment and Labour Relations Court to try and determine the matter.



10. The petitioner acknowledges the existence before this court Judicial review Application No. 1 of 2018 where the respondents therein are the 3rd, 1st, and 2nd respondents in this petition. The ruling in that matter has been annexed to their petition. The respondents on the other hand aver that there are other suits to wit; Bungoma J.R Application No. 2 of 2018 and Kisumu ELRC Cause No. 188 of 2018 touching on the very same matter. The pleadings in these other causes have not been exhibited though before this court.
11. It is now settled that issues of jurisdiction ought to be determined first as it goes to the root of the matter. In this petition, the respondent urges the court to find that the competent court is the Employment and Labour Relations Court.

Section 12(1)(a) of the *Employment and Labour Relations Court Act* provides for the jurisdiction of the court. The Section provides;

disputes relating to or arising out of employment between an employer and an employee;

12. It is common ground that the borne of contention herein arises from the employment and the alleged termination of the petitioner's services by the 5th respondent. It is further apparent that the petitioner instituted suits after the said termination which matters are pending in Kisumu and this court. This fact has not been controverted or disputed by the petitioner.
13. Having found as such, I find and hold that this suit is erroneously before this court. The petitioner's recourse in the circumstances is to pursue the matters filed before and not to institute a fresh suit on the same grounds. This will lead to the court's issuing contradictory orders and is an abuse of the court process.
14. Prior to this ruling, the court reserved the file for ruling on 30/3/2022. The petitioner on March 25, 2022 filed 2 notices; the first one is the notice of intention to act in person, the 2nd one being a notice of withdrawal of the petition. This has been taken into account and the ruling herein is merely academic the substantive petition having been withdrawn.
10. As such, the petition herein is dismissed with costs to the respondents.

DATED AT BUNGOMA THIS 30TH DAY OF JUNE, 2022

S. N. RIECHI

JUDGE

