



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAPENGURIA**

**MISCELLANEOUS APPLICATION NUMBER 4, 5, 6 AND 7 OF 2017**

***(Formerly Kitale HCMA 69 of 2015)***

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT**

**OF WEST POKOT.....1<sup>ST</sup> RESPONDENT**

**WEST POKOT COUNTY**

**PUBLIC SERVICE BOARD.....2<sup>ND</sup> REPSONDENT**

**JACKSON NGURIANGENYENG.....3<sup>RD</sup> REPSONDENT**

**THE HON. ATTORNEY GENERAL...4<sup>TH</sup> RESPONDENT**

**EX-PARTE: JOEL P. ARUMONYANG AND OTHERS**

**RULING**

The ruling in this file, **Miscellaneous Application number 4 of 2017**, also covers related matters in files number **5, 6 and 7 of 2017**. In **Miscellaneous application number 4 of 2017** the exparte applicant, one Joel P. Arumonyang was dismissed from the Post of County Secretary vide a letter dated 7.10.2015, signed by the 3<sup>rd</sup> respondent (Jackson Nguriangengan). In file number **5 of 2017**, the exparte applicant one Catherine Chepkemei Mukanyang, was dismissed from the Post of County Executive Committee Member in charge of Health and Sanitation, vide a letter dated 8.10.2015, signed by the Deputy County Secretary the 2<sup>nd</sup> Respondent (Powon Kapello).

File number **6 of 2017** relates to dismissal of Exparte Applicant, one Josiah Cheruiyot Piwot, who was dismissed from the Post of County Executive Committee Member in charge of Livestock, Veterinary Services and Fisheries, vide a letter dated 8.10.2015, signed by the Deputy County Secretary, one Powon Kapello (2<sup>nd</sup> Respondent). The last file number **7 of 2017** is about dismissal of one Luka K. Chepelion, who was dismissed from the post of County Executive Committee Member in charge of Public Works, Roads and Transport, vide a letter dated 8.10.2015, signed by the Deputy County Secretary, one Mr. Powen Kapello.

The applicants seek for orders that this Honourable Court be pleased to issue an order of **certiorari** to remove into this Honourable Court and quash the decision of the County Government of Wet Pokot, embodied in the letters dismissing each one of them from the stated positions.

The applicants sought the orders based on the grounds that the 1<sup>st</sup> respondent’s purported dismissals were null and void in that it failed to comply with the mandatory provisions of **section 44 of the County Government Act**, in respect of file number **4 of 2017**, and provisions of **sections 31 and 40** in respect of the other files, of the said Act.

Before the court can address the issues at hand, it must first be satisfied that it has jurisdiction to hear the matters.

The issues raised by all the applicants concerns their dismissal from employment by the County Government of West Pokot. **Article 162(2) of the Constitution of Kenya 2010**, provides that 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.*

**Article 165(5) of the said Constitution** further provides that the High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in **Article 162(2)**.

The **Industrial Court Act under section 12(1)**, vests the court with 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 the Act or any other written law which extends jurisdiction to the court relating to **Employment and Labour Relations**, including – and given powers under section **12(3)** to:-

3) *make any of the following orders:-*

*i. Interim preservation orders including injunctions in cases of urgency;*

*ii. A prohibitory order;*

*iii. An order for specific performance;*

*iv. A declaratory order;*

*v. An award of compensation in any circumstance contemplated under the Act or any other written law;*

*vi. An award of damages in any circumstances contemplated under the Act or any other written law;*

*vii. An order for reinstatement of any employee within three years of dismissal, subject to such conditions as the court think fit to impose under circumstances contemplated under any written law; or*

*viii. Any other appropriate relief as the court may deem fit to grant.*

The foregoing shows that the Employment and Labour Relations Court has the jurisdiction and the power to hear the applications in this matters and grant the sought for orders. **Under Article 165(5) of the Constitution of Kenya 2010**, this court lacks jurisdiction to entertain a matter of which falls within the jurisdiction of the courts contemplated in **Article 162(2)**.

In the case of **Owners of Motor Vessel “Lilians” versus Caltex Oil (K) Ltd (1989) KLR 1 (CAK)**, the court emphasized on the importance of jurisdiction, where at page 14, Nyarangi JA stated;

***“Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending evidence. A court of law downs the tools in respect to the matter before it the moment it holds the opinions that it is without jurisdiction.”***

In all these matter I don't have jurisdiction. I therefore immediately down the tools at this point, and dismiss the applications for want of jurisdiction, with costs to the Respondents.

Ruling read and signed in the open court this 22<sup>nd</sup> February, 2018 in presence of Mr. Kiarie for the applicant.

**S. M. GITHINJI**

**JUDGE**

**22.2.2018**