



**Chepsiror v Ruto & another (Civil Case E007 of 2024)
[2025] KEHC 2051 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2051 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE E007 OF 2024
RN NYAKUNDI, J
FEBRUARY 21, 2025**

BETWEEN

RODAH CHEPTARUS CHEPSIROR PLAINTIFF

AND

HON WILLIAM SAMOEI RUTO 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. The Plaintiff herein filed a Complaint dated 27th June 2024 seeking the following orders against the 1st Defendant;
 - a. A compilation of the President's name, along with the flag and shield of the Republic of Kenya, should be safeguarded and not used for personal interests.
 - b. All general damages for breach of her danger life
 - c. Interests on the Plaintiff's total malicious damages
 - d. Costs of the suit.
 - e. Any other relief this court would deem fit and just to grant.
2. The Hon. Attorney General, 2nd Defendant herein entered appearance on 27th June 2024 by raising a Preliminary Objection on the following grounds;
 - a. That the suit is unconstitutional and offends mandatory provisions of Article 143(2) which expressly that Civil Proceedings shall not be instituted in any Court against the President of the person performing functions of that office during their tenure of office in respect to anything done or in exercise of their powers under this Constitution.



- b. That the pleadings are incoherent and do not disclose any cause of action contrary to the provisions of Order 2, rule 1 of the Civil Procedure Rules on Pleadings generally which states that every pleading in Civil Pleadings including proceedings against the Government, shall contain information as to the circumstances in which it is alleged that the liability has arisen and, in the case of the Government, the departments and officers concerned.
 - c. That this suit is an abuse of the Court Process.
 - d. That the suit is incompetent and ought to be struck out with costs.
3. The Plaintiff herein filed a response dated 19th December 2024 to the 2nd Defendant's Preliminary Objection in which she stated as follows:
- a. I strongly oppose and decline the claims in their entirety, and I will rely on the court's direction in this matter.
 - b. Article 1 of *the Constitution* affirms the sovereignty of the people, including their collective ethnic powers. The court may refer to any constitutional article it deems appropriate to certify the Plaintiff's claims.
 - c. The sovereignty of the people—encompassing dominion, power, rule, control, independence, and self-governance—can only be exercised within the Republic of Kenya by its citizens. The Plaintiff's demands, which seek to represent the voice of the Kenyan people in the presidency, must be examined in the interest of justice.
 - d. I respectfully approach this court and submit all necessary documents, including my full name, in support of my pursuit of justice. Pursuant to Article 48 of the 2010 Constitution, I seek legal intervention to address the challenges affecting the Republic of Kenya. These challenges include ongoing demonstrations, acts of violence, and destruction across all 47 counties, which have significantly impacted the nation in 2024.
 - e. Article 20(1) of the Bill of Rights applies to all laws and binds both state organs and individuals to uphold fundamental rights.
 - f. Article 29 of the 2010 Constitution guarantees the right to freedom and security of the person, while Article 56(a) and (b) provide for the protection of marginalized groups. The court must consider any changes that may arise in the interpretation of these provisions, especially in light of recent acts of violence, destruction, and kidnappings that have directly affected the Plaintiff, who claims to represent the "Kenya Voice for President." The resulting disturbances have had a profound impact on the Republic of Kenya.
 - g. The Defendants, based on events of December 4, 2024, should be held liable for the costs stated in the Plaintiff, which cover damages including the destruction of important documents, harm to health, and malicious damages. The court may assess and determine the appropriate compensation for the Plaintiff.



Analysis and Determination

4. It is now settled that a preliminary objection should only be raised on a matter of law as was observed by the court in *Mukisa Biscuit Manufacturing Company Ltd v West end Distributors Ltd* 1969 EA 696 where the principles were captured as follows:

“so far as I am aware a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose the suit. Examples are an objection to jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. Further the court held: “A preliminary objection is in the nature of what used to be a demure. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or of what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and on occasion confuse the issues. This improper practice must stop.”

5. I have considered the preliminary objection and the response thereto and there is only one issue manifest for determination at this stage;

Whether the Preliminary Objection is merited by dint of Article 143(2) of *the Constitution* of Kenya 2010.

6. I take note that Article 143(2) of *the Constitution* provides as follows:

“Civil proceedings shall not be instituted in any court against the President or the person performing the functions of that office during their tenure of office in respect of anything done or not done in the exercise of their powers under this Constitution.”

7. Article 143(2) grants the 1st Defendant immunity from civil proceedings in any court during their tenure in office. Presidential immunity was elaborated in *Abdul Karim Hassanaly & another vs. Westco Kenya Ltd & 3 others* [2003] eKLR, a decision made under the pre-2010 Constitution, where the court struck out the name of the President from the proceedings before it.

8. The Court in the case *Julius Nyarotho Vs Attorney General & 3 others* [2013] KEHC 4162 (KLR) discussed the doctrine of presidential immunity, and said as follows:

(14) Needless to state that, the Presidency is a creature of *the Constitution*. According to Articles 1(3) (a), 129 and 130, the executive authority is derived from the people and is exercised in accordance with *the Constitution*. The presidency should adhere to, promote and protect *the Constitution*, to mention a few say; observe national values and principles of governance (Article 10), observe principles of executive authority, maintain integrity for leadership (chapter six), observe legal requirements, and respect the authority of the judiciary. If the presidency violates the requirements of due process of the law as laid down in Constitution or any statute law, *the Constitution* is not helpless, as, it is self-referential and does not suffer a wrong without a remedy. Therefore, judicial review will lie against an order of appointment made by a sitting President in contravention of the law. This is a public law remedy which is directed to the state itself as the president exercised executive authority of state. It is a subject that is governed by the public law of the state. A narrow and strict interpretation of Article 143 of *the Constitution* would offend Article 259 of *the Constitution*



which demands a purposive interpretation in order to give effect to the objects, purposes and values of *the Constitution*.”

9. The rationale for official immunity applies where only personal and private conduct by a president is at issue. It means that there shall be no case in which any public official can be granted any immunity from suit from his unofficial acts. The President being a public servant represents the interests of the society as a whole. The conduct of his official duties may adversely affect a wide variety of different individuals each of whom may be a potential source of current or future controversy. In some quarters the societal interest in providing the President with maximum ability to deal fearlessly and impartially with the public at large has long been recognized as an acceptable justification for official immunity. The immunity for the President in such circumstances is meant to forestall an atmosphere of intimidation that will conflict with his resolve to perform his designated functions in a principled fashion.

10. In Republic Vs Chief Justice of Kenya & 6 others Ex-parte Moiyo Mataiya Ole Keiwua [2010] eKLR, it was said as follows:

We must add that the courts have no power to review the exercise of powers by the President provided that the President is acting within the scope of his powers and within the confines of *the Constitution*. And that he is within the legal nature of the exercise of his powers and responsibilities. No doubt the courts have powers to restrict and review decisions made by a sitting President which is in contravention of *the Constitution* and which is against public interest and policy.

11. The courts have had to grapple with that question in Kenya in a number of cases. In the Nyarotho case (Supra), the court had this to say on the subject:

“(12) I take the view that Article 143 of *the Constitution* protects a sitting President from legal proceedings. *The Constitution* has, however, under Sub-Article (4) of Article 143, created an exception to the protection offered with regard to legal proceedings against the President for which the President may be prosecuted under any treaty to which Kenya is a party and which prohibits such immunity.”

12. It is my view that except in those exceptions allowed under the law, a sitting President cannot ever be made a party to any legal proceedings in court. Any argument that would suggest a possibility of enjoining a sitting President as a party so that orders of judicial review can issue, to say the least, would be quite blind to the provisions of Article 143 of *the Constitution*. But it should be understood that the immunity in Article 143 of *the Constitution* only lasts for the time the President is in office.

13. Under our constitutional architecture of separation of powers, the nature of presidential powers entitles a President while in active service to absolute immunity from criminal prosecution or otherwise civil actions within his or her conclusive and preclusive constitutional authority. There is no immunity for un-official acts. *The Constitution* vests executive power in a President of the Republic of Kenya given the fact that his duties are of unrivaled gravity and breath. The letter and spirit of *the Constitution* is that the President exercises such authority and Parliament or the Courts cannot examine the President’s actions executed in his official capacity. In dividing what constitutes official from unofficial conduct, given our constitutional structure courts may not inquire into the President’s motives and intentions. This is to protect the executive office from intrusive inquiry which may expose it to a risk of people with malice to subject such an office to ill will, defamation or unlawful intent to deprive it of its immunity.

14. From the foregoing, the notice of preliminary objection dated 13th August 2024 is merited by dint of Article 143(2) of *the Constitution* of Kenya 2010. Consequently, the following orders do issue;



- a. The 1st Defendant herein, H.E. William Samoei Ruto, P.H.D, CGH, who is the President of the Republic of Kenya and Commander in Chief (CIC) of the Kenya Defence Forces be and is hereby struck off as a party in this cause.
- b. The suit shall proceed with the Plaintiff prosecuting the matter as against the Hon. Attorney General as the primary Defendant.
- c. The status conference shall be held on.....for further directions
- d. The costs shall be in cause

DATED AND SIGNED AT ELDORET THIS 21ST DAY OF FEBRUARY, 2025

.....

R. NYAKUNDI

JUDGE

