



REPUBLIC OF KENYA



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**Ngalukya & 45 others v Mingania & another; Gatura & 3 others (Interested Parties)
(Constitutional Petition E004 of 2024) [2025] KEHC 6798 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CONSTITUTIONAL PETITION E004 OF 2024**

TM MATHEKA, J

MAY 23, 2025

**IN THE MATTER OF SECTIONS 3(1), (3), (4), (5), (6) & 4(2) (II)
OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE & PROCEDURE**

RULES

AND

**IN THE MATTER OF RULES 3,4 & 10 OF THE CONSTITUTION
OF KENYA [PROTECTION OF RIGHTS AND FUNDAMENAL
FREEDOMS (PRACTICE AND PROCEDURE) RULES] 2010**

AND

**IN THE MATTER OF HIGH COURT (ORGANISATION AND
ADMINISTRATION) ACT 2015 SECTION 3, 11 & 25**

AND

**IN THE MATTER OF ARTICLES 22, 23, 25, 29, 33, 36, 41, 48,
43, 11, 232 & 259 (1) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 786,800,810,814,863 & 1004
OF THE COMOANIES ACT 2015**

AND

**IN THE MATTER OF SECTIONS 6, 7, 8 & 20 OF THE MEDICAL
PRACTITIONERS AND DENTISTS ACT (CAP 235) OF THE LAWS
OF KENYA**

AND



**IN THE MATTER OF SECTIONS 4 & 5 OF THE LABOUR
RELATIONS ACT 2007**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMNTAL RIGHTS AND FREEDOMS**

BETWEEN

**FELIX NGALUKYA & 45 OTHERS & 45 OTHERS & 45
OTHERS PETITIONER**

AND

PURITY NTINYARI MINGANIA 1ST RESPONDENT

FESTUS MULINGE MULI 2ND RESPONDENT

AND

JOSEPH GORDON GATURA INTERESTED PARTY

MAKINDU MEDICAL CENTRE INTERESTED PARTY

EVERLYNE MUNINI JACOB INTERESTED PARTY

MARTIN MUTUA KIVEKU INTERESTED PARTY

RULING

1. In the Petition dated 25/03/2024, the reliefs sought are;
 - a. A declaration that the Respondents are in breach and have violated the Petitioners' fundamental rights and freedoms.
 - b. A declaration that the 1st Respondent has breached a statutory and fiduciary duty to the 2nd Interested Party by engaging in fraudulent, dishonest and unethical conduct.
 - c. A declaration that the 1st Respondent has breached and or violated chapter 6 of the [Constitution](#) of Kenya and the National Code of Conduct for nurses in Kenya.
 - d. An order directing an independent audit into the accounts of the 2nd Interested Party to ascertain all amounts of unlawful commissions hitherto paid to the 1st Respondent.
 - e. An order directing the 1st Respondent to reimburse in full the amounts unlawfully so paid together with interest thereon.
 - f. An order directing the Nursing Council of Kenya to investigate violations to its code of conduct by the 1st Respondent and to take appropriate action to redress all the aggrieved parties particularly the petitioners herein.



- g. A declaration that by virtue of their contribution and financial dealing with the 2nd Interested Party, the Respondents ceased to be shareholders of the 2nd Interested Party and assume the role of employees.
- h. Orders permanently restraining the Respondents from interfering with the human resource functions of the 2nd Interested Party particularly, harassing, threatening, intimidating, terminating services or in any other way violating the fundamental rights and freedoms articulated herein.
- i. Orders permanently removing the Respondents as mandatory signatories to the 2nd Interested Party's accounts and for the making of appropriate replacement thereof.
- j. Any other order, relief or remedy which this honorable court may deem fit and proper to grant in the circumstances of this case.

The Preliminary Objection

2. The 1st Respondent raised a P.O dated 15/04/2024 grounded as follows;
 - a. That the instant Petition lacks specificity in regard to the alleged violations and lacks substantiation hence does not satisfy the criteria of a Constitution Petition as established in the Case of Anarita Karimi Njeru –vs- Republic (1979) eKLR.
 - b. That this Honourable Court lacks Jurisdiction to hear and determine the Petition as the subject matter is a civil dispute of the nature of an employee-employer dispute which is within the jurisdiction of the Employment and Labour Relations Court.
 - c. That the Petition is an abuse of the Court process as it seeks to obstruct compliance with Court Orders issued on 22nd March 2024 in HCCC E003 OF 2024, Purity Mungania -vs- Gordon Gatura & Others.
3. The Petitioners did not file any response to the P.O.
4. The P.O was canvassed through written submissions.

Submissions by the 1st Respondent

5. The Respondent identified the issues for determination to be;
 - a. Whether the Petition meets the threshold of particularization and substantiation of violations of the Constitution set in Anarita Karimi Njeru -vs- Republic (1979) eKLR
 - b. Whether the Court has jurisdiction to hear and determine employee-employer disputes.
6. Relying on Anarita Karimi Njeru –vs- Republic (1979) eKLR the respondent submitted that the Petitioner has not pleaded with precision particulars of violations of the Constitution as required; that the test in Anarita Karimi Njeru (supra) has been refined and upheld severally in countless decisions of the superior courts for instance Mumo Matemo -vs- Trusted Society of Human Rights Alliance [2014] eKLR where the Court of Appeal held that:

“...the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give



fair notice to the other party. The principle in *Anarita Karimi Njeru (supra)* that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle”

7. Further reference to *Nasra Ibrahim Ibren -vs- Independent Electoral and Boundaries Commission & 2 others* [2018] eKLR where the Court of Appeal held that;

“A party is under a constitutional forensic duty to clearly set out the particulars of the constitutional transgressions that in his/her opinion the Court of Appeal committed in their interpretation and/or application. Those grounds must be pleaded with precision and the constitutional principle and/or provision alleged to have been violated clearly set out.”

8. And further to *Khen Kharis Mburu -vs- Inspector General Police Service & 3 others* [2019] eKLR where the court held thus;

“One of the cardinal principles in constitutional litigation is that a party who claims that a right or fundamental freedom has been violated, is being violated or is threatened, must plead with accuracy and precision demonstrating the right violated, or infringed, the article of the *Constitution* violated and the jurisdictional basis for it. That is; it is now an established principle of law that anyone who wishes the court to grant a relief for violation of a right or fundamental freedom must plead in a precise manner the constitutional provisions said to have been violated or infringed, the manner of infringement and the jurisdictional basis for it.”

9. The Respondent also relied on Rule 4 (2) of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as ‘the Mutunga Rules’) for the submission that the petition was not pleaded with precision as required in constitutional petitions. That the Petition did not provide any particulars of the claims relating to the alleged violations of the *Constitution* of Kenya. It was submitted that although paragraph 46 of the Petition included a clause on Particulars of breach of the Petitioners’ rights and freedoms by the Respondents listing articles 22,23 (1), 25, 33,36, 41 (1) and 43 (1) as having been breached, the petitioners failed to provide explanations in the supporting affidavit of how these rights had been violated by the Respondents. That no evidence has been provided to back up the allegations of Constitutional violations.
10. It was submitted that paragraph 47 of the Petition claims that the 1st Respondent had breached Chapter 6 of the *Constitution* and National values and principles but the Petitioner’s claim did not identify the specific clauses of Chapter 6 or the National Values and Principles allegedly breached by the 1st Respondent. That no evidence in support of the alleged violations is found in the supporting affidavit of Felix Ngalyuka, the lead Petitioner.
11. It was submitted that there is no record of evidence provided in the supporting affidavit that supports and/or provides demonstrable evidence of violations of articles 22, 23,25,29,33,36,41,43,11 and all other constitutional provisions stated in the Petition.
12. It is argued that petition does not adhere to the guidelines provided by the Mutunga Rules on the contents of a Petition in that it does not include two critical components to wit;
 - a) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;



- b) details regarding any civil or criminal case, that involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
13. It was submitted that the Supporting Affidavit contains extensive allegations of criminal culpability of the 1st Respondent for instance, at paragraph 41 it is alleged that the 1st Respondent doctored medical records. It was contended that this would ordinarily amount to forgery and fabrication which is a criminal offence but there is no record that these offences were reported to the appropriate authorities.
14. It was submitted that the petition does not raise any constitutional issue relying on *Wahome -vs- Attorney General & 2 others (Petition E277 of 2020)* [2021] KEHC 73 (KLR) where the court defined a Constitutional issue thus;
- “.....broadly speaking, a constitutional issue is, therefore, one which confronts the various protections laid out in a constitution. Such protections may be in respect to the Bill of Rights or the *Constitution* itself. In any case, the issue must demonstrate the link between the aggrieved party, the provisions of the *Constitution* alleged to have been contravened or threatened and the manifestation of contravention or infringement. In the words of Langa, J in *Minister of Safety & Security v Luiters*, (2007) 28 ILJ 133 (CC): -... When determining whether an argument raises a constitutional issue, the Court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the Court to consider constitutional rights and values...”
15. It was submitted that a detailed scrutiny of the petition reveals that it is nothing but a civil dispute disguised as a Constitutional petition. That an elaborate scrutiny of the prayers sought and grounds in the supporting affidavit should reveal to this Court that the crux of the dispute is the internal affairs and management of the company by the name Makindu Medical Centre Limited and that there is nothing constitutional about the dispute.
16. As to whether the Court has jurisdiction to hear and determine employee-employer disputes, it was submitted that the Employment and Labour Relations Court is established pursuant to Article 162 (2) (a) of the *Constitution* to hear and determine disputes relating to employment and labor relations. That the *Employment and Labour Relations Court Act*, No. 20 of 2011 operationalizes the Court and section 12 (1) thereof outlines the jurisdiction of the Court.
17. It was submitted that the Petitioners’ claim is a dispute relating to or arising out of employment between an employer and an employee because; i) according to the heading of the petition, one of the substantive laws of the dispute is section 4 and 5 of the *Labour Relations Act* which is one of the main substantive statutes that govern the Employment and Labour Relations Court. That any dispute based on this Act falls within the jurisdiction of the ELRC court. ii) prayer VII of the Petition seeks the declaration of Respondents as employees of the 2nd Interested Party hence this Court is being called to determine employment status. It was contended that such a prayer should be directed to the ELRC court.
18. In conclusion, this court was urged to uphold the P.O and dismiss the petition with costs to the 1st Respondent.

Submissions by the Petitioners & Interested Parties

19. They identified the issues for determination to be;
- a. Whether the P.O is merited and /or meets the criteria for a preliminary objection.



- b. Whether the petition satisfies the criteria for a constitutional petition.
 - c. Whether this court is seized with jurisdiction to hear and determine the petition.
 - d. Who should bear the costs of this application?
20. On the first issue, reliance was placed on *Mukisa Biscuit Manufacturing Co. Ltd –vs- West End Distributors Ltd (1969) EA 696* where the court defined a P.O;
- “a preliminary objection is in the nature of what used to be a demurer. It raises a pure point of law which is urged 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 if what is sought is the exercise of judicial discretion.”
21. With regard to the nature of a P.O, reliance was placed on *Mbarak Mbaja (2005) eKLR* for the submission that it should be a pure point of law which must not be blurred with factual details liable to be contested and proved through a process of evidence.
22. Further reliance was placed on *Margaret Wairimu Kariuki -vs- John Waweru Kabiru (2021) eKLR* where the court stated;
- “for the court to determine whether the issues herein were directly and substantially in issue with the other suit, it is the court’s considered view that it will have to ascertain and probe evidence ascertaining whether the issues raised in the instant suit are the same as the ones in the appeal aforesaid and further interrogate the prayers sought whether they are the same and relate to the same issues. On whether or not the same are sub-judice, facts have to be ascertained and a preliminary objection cannot be raised on disputed facts. Therefore, this court holds and finds that what has been raised by the 1st respondent does not amount to a preliminary objection and thus the preliminary objection is not merited.”
23. It was submitted that in order for this court to ascertain whether the petitioners have raised labor issues, it will have to delve to the pleadings and address matters of fact which clearly removes the P.O from pure points of law into the realm of facts. This argument was supported with *Jane Chepremerger and 2 Others (2015) eKLR*, *Joel Kendwiyo -vs- District Criminal Investigations Officer Nandi & 4 Others (2019) eKLR* & *Patrick Baya Martha -vs- Cabinet Secretary Industry Enterprises Development & 2 Others (2021) eKLR* for the submission that a P.O should not be used as sword to win a case and deny the Petitioner an opportunity to be heard on merit.
24. As to whether the petition meets the criteria of a constitutional petition, it was submitted that the petition chronicles a series of commercial disputes and misunderstandings between the directors of the 2nd Interested Party which have resulted in constitutional violations against the Petitioners. That the violations range from refusal to sign suppliers and salary cheques for employees, siphoning of hospital materials, alteration of theatre attendance registers, altercations in theatre in the glare of the public, harassment and intimidation of staff expressing dissenting opinions among other violations. It was contended that the violations have not only affected the Petitioners’ right to earn a livelihood but also the right of patients and community of interest to access essential medical service from the 2nd Interested Party.
25. The Petitioners relied on Rules 4 and 10 of the Mutunga Rules for the submission that the Petitioners’ pleadings have met the criteria for a constitutional petition by among others; setting out the facts relied on in precision, citing the specific constitutional provisions infringed as well as the injuries sustained by



the Petitioners and community of interest. The Petitioners cited South African Constitutional Court in *Frederick & Others -vs- MEC for Education and Training Eastern Cape & Others* (2002) 23 ELJ. 81(CC) where the court stated;

“the *Constitution* provides no definition of constitutional matter ‘what is a constitutional matter must be cleared from a reading of the *Constitution* itself’ if regard has to be had to the provisions...constitutional matters must include disputes as to whether any law or conduct is inconsistent with the *Constitution* as well as issues concerning the status, powers and functions of an organ of the state... the interpretation, application and upholding of the *Constitution* are also constitutional issues...the jurisdiction vested in the constitutional court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly on extensive jurisdiction...when determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider constitutional rights and values...”

26. Further reference was made to *Kenya National Commission on Human Rights -vs-Attorney General, Independent Boundaries Commission & 16 Others (Interested Parties)* (2020) eKLR where the court stated;

“the court must always consider whether the party seeking to move it falls within the categories of parties decreed as having such *standi* by the *Constitution*.”

27. As to whether this court has jurisdiction to hear and determine the petition, it was submitted that a close scrutiny of the pleadings reveals that the root and genesis of the cause of action is a commercial dispute involving the directors of the 2nd Interested Party which has spilled over to the employees particularly in their desperate attempt to reconcile the directors and salvage the going concern status of the 2nd Interested Party in order to salvage their employment.

28. It was submitted that the 1st Respondent has perceived a substantial number of the Petitioners to owe allegiance to the 1st Interested Party and has reacted by engaging in conduct which infringes upon and tramples down their constitutional rights. That this suit is a classic example of a cocktail cause of action in which this court is invited to apply the pre-dominant purpose rule rather than adopting the simple approach of disclaiming jurisdiction with resultant costs, delays, hardship and inconvenience to the parties. The court was referred to *Suzanne Achieng Butler & 4 Others -vs- Redhill Investments Ltd & Anor* (2016) eKLR where the court stated;

“When faced with a controversy whether a particular case is a dispute about land (which should be litigated at ELC) or not, the courts utilize the pre-dominant purpose test. In a transaction involving both a sale of land and other services or goods, jurisdiction lies at the ELC if the transaction is predominantly for land but the High Court has jurisdiction if it is predominantly for the provision of goods, construction or works. The court must first determine whether the predominant purpose of the transaction, that is, whether the contract primarily concerns the sale or land or in this case, the construction of a town house.”

29. The Petitioners submit that the approach has been upheld severally by the Supreme Court and the Court of Appeal as demonstrated in *Benson Makori Makoro -vs- Nairobi Metropolitan Services & 2 Others*; Constitutional Petition No E336 of 2020, *John Ngimor & 554 Others -vs Nothern Pending*



Trust & 3 Others, Republic -vs- Chairman Business Premises Rent Tribunal & David Wakahu Ng'ang'a ex-parte Carrington Complex Ltd (2019) eKLR.

30. This court was invited to consider that there is a related matter namely HCCOM No. E003 of 2024 involving the Respondents and the 1st Interested Party where it has already indicated that it is seized of jurisdiction. That the root causes of the dispute are related but the Petitioners are not parties to that dispute for want of locus.
31. Further, this court was invited to consider the overriding objectives under sections, 1A, 1B and 3A of the *Civil Procedure Act* namely the necessity for efficient, affordable and cost-effective approach by the court in resolution of disputes.
32. It was contended that upholding the P.O would be an affront to the overriding objective of the statute as it would be calling upon the petitioners to file another matter at the ELRC while another matter with the same underlying causes of action remains before this court. That it will result in undue inconvenience and costs to the Petitioners.
33. This court was also invited to consider that it has already referred parties to mediation which was attended for at least 4 occasions and concluded. That the action in itself amounted to exercise of jurisdiction over the matter. That if the court disclaims jurisdiction at this stage, it will render the mediation proceedings a nullity retrospectively and occasion a miscarriage of justice to the Petitioners.
34. As to who should bear the costs of the application, reference was made to section 27 of the *Civil Procedure Act* for the submission that costs follow the event.

Analysis & Determination

35. Mukisa Biscuit Manufacturing Co. Ltd –vs- West End Distributors Ltd (1969) EA 696 is the locus classicus on the threshold of a P.O. The Court of Appeal stated that;

“...a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit.....

A preliminary objection is in the nature of what used to be a demurrer. 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 if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.”

36. It is therefore well settled that a P.O must not be blurred with factual details needing to be established through the process of evidence.
37. The first ground in the P.O is that the Petition lacks specificity and substantiation of the alleged violations. The locus classicus, Anarita Karimi Njeru (supra) and many other authorities determined thereafter, require constitutional petitions to be framed precisely. A petitioner is expected to state the complaint, the constitutional provision that is alleged to be violated and the manner of violation. Additionally, Rule 4(2) of the Mutunga Rules provide that;

“The petition shall disclose the following

- a) the petitioner’s name and address;



- b) the facts relied upon;
- c) the constitutional provision violated;
- d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
- g) the relief sought by the petitioner.”

38. In this matter paragraph 46 of the Petition makes reference to the provisions of Articles 22, 23, 25, 33, 36, 41 and 43 of the Constitution. These same articles are contained in the heading of the Petition. A look at the body of the Petition reveals that the Petitioners have not specifically stated how their rights under the said Articles have been infringed by the Respondents or the injury that has resulted or is expected to result from the infringement.
39. Paragraph 47 of the petition states that the 1st Respondent has contravened chapter 6 of the Constitution of Kenya as read with Article 232 and 259(1) thereof as pertains integrity, national values and principles. Chapter 6 of the Constitution is on leadership and integrity for state officers, Article 232 is on public service and Article 259 is on interpretation of the Constitution.
40. the Constitution defines a State Officer’ as a person holding a state office and further provides that a ‘state office’ means any of the following offices; President, Deputy President, Cabinet Secretary, Member of Parliament, Judges & Magistrates, member of a commission to which Chapter Fifteen applies, holder of an Independent Officer to which Chapter Fifteen applies, member of a county assembly, governor or deputy governor of a county or other member of the executive committee of a county government, Attorney General, Director of Public Prosecutions, Secretary to the Cabinet, Principle Secretary, Chief of the Kenya Defence Forces, commander of a service of the Kenya Defence Forces, Director General of the National Intelligence Service, Inspector General and Deputy Inspectors General of the National Police Service or an office established and designated as a State Office by national legislation.
41. The licence of the 2nd Interested Party (the hospital) shows that it is a private medical institution and the Petitioners have not demonstrated the state office being held by the Respondents as well as the specific provisions that have been violated. The Petitioners have made reference to full chapters of the Constitution hence falling short of the requirement of precision.
42. Some of the particulars of injuries given in the petition relate to the hospital itself and not the Petitioners and there is no demonstration of the nexus between violation of rights by the Respondents and resultant loss to the Petitioners. For example, loss of image and reputation of the Hospital has been particularized as a loss but the Petitioners have not demonstrated the specific right which has been violated by alleged loss.
43. The Petitioners have also alleged that the 1st Respondent siphoned millions of shillings through fabricated, doctored and bogus entries in the staff theatre attendance book. This allegation borders on the criminal offence of obtaining by false pretenses yet there is no evidence of such a case against



the 1st Respondent. In short, it is evident that the petition lacks specificity and substantiation of the alleged violations.

44. The second ground in the P.O is that this Court Lacks Jurisdiction to hear and determine the Petition as the subject matter is a civil dispute of the nature of an employee-employer dispute which is within the jurisdiction of the Employment and Labour Relations Court.
45. It has been readily admitted by the Petitioners that the genesis of the petition is a dispute among the directors of the hospital which has spilled over to the employees (petitioners) and that the employees have tried to reconcile them in a desperate attempt to salvage the hospital and their employment.
46. Having read the petition and affidavit in support, it is clear that a lot of the grievances by the Petitioners are directed to the 1st Respondent who is one of the directors of the hospital. The grievances include interference with the human resource functions of the hospital e.g intimidating, abusing and threatening the employees, causing disturbance at the hospital, conflict of interest etc. This court has also been called upon to determine the employment status of the Respondents and from the heading of the petition, the dispute is based on sections 4 and 5 of the Labor Relations Act.
47. The determination of the employment status of the Respondents is a preserve of the Employment and Labor Relations Court (ELRC). If found to be employees, then the complaints herein are by employees against other employees hence properly governed by section 12(2) of the ELRC Act which provides thus;

“ An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer’s organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.”

48. In the foregoing analysis, the issues raised in the Petition are pre-dominantly labor related and the jurisdiction lies with the ELRC. Section 12 thereof outlines the jurisdiction of the Court as follows;

“The Court shall have 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 this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including;

- a. disputes relating to or arising out of employment between an employer and an employee;
- b. disputes between an employer and a trade union;
- c. disputes between an employers’ organization and a trade union’s organization;
- d. disputes between trade unions;
- e. disputes between employer organizations;
- f. disputes between an employers’ organisation and a trade union;
- g. disputes between a trade union and a member thereof;
- h. disputes between an employer’s organisation or a federation and a member thereof;
- i. disputes concerning the registration and election of trade union officials; and



j. disputes relating to the registration and enforcement of collective agreements.

49. Upholding the P.O will certainly have a cost implication for the Petitioners but it is trite that where a court forms the opinion that it lacks the requisite jurisdiction, then it should automatically down its tools as held in the case of

50. In the oft cited Owners of the Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Ltd [1989] eKLR the court dealt with the issue of jurisdiction stating that it was stated by Nyarangi JA

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 as 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

51. The learned Judge then stated:

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

52. The Respondent has raised this question at this earliest. The court cannot for any reason whatsoever assign itself Jurisdiction.

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.

53. It is clear that from the moment the court finds it lacks jurisdiction the court cannot take any more steps in the matter.

54. I have anxiously considered the matter and it is evident from the submissions laid before me in the P.O that the Petitioners have not met the threshold of a Constitutional Petition.

55. More importantly what has brought them before this court are issues related to their employment, emanating from the commercial dispute over the Hospital subject of these proceedings. the Constitution prohibits this court from crossing into the places covered by the ELRC Court.



56. In the upshot I find that the P.O is merited and strike out the petition accordingly with costs to the 1st respondent .

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD MAY 2025

MUMBUA T MATHEKA

JUDGE

Chrispol Court Assistant

Kirimi for 1st Respondent

Ms Okinyi HB for Mr. Kivindyo for the Petitioners

