



Kombo v Principal Secretary, State Department for Technical Vocational Education Training & another (Judicial Review Application E007 of 2024) [2025] KEHC 10431 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
JUDICIAL REVIEW APPLICATION E007 OF 2024**

S MBUNGI, J

JULY 10, 2025

IN THE MATTER OF AN APPLICATION BY JOSEPHAT BARASA KOMBO FOR LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW: CERTIORARI AND PROHIBITION GRANTED ON 29/10/2024

AND

IN THE MATTER OF THE PRINCIPLE SECRETARY, STATE DEPARTMENT FOR TECHNICAL, VOCATIONAL EDUCATION AND TRAINING COMMENCING AND MAKING UNLAWFUL DECISIONS IN THE LETTERS DATED 13/8/2024 AND 2/4/2024.

AND

IN THE MATTER OF VIOLATION OF CONSTITUTIONAL RIGHTS UNDER ARTICLES 19,22,23,47,48 AND 50 OF THE CONSTITUTION OF KENYA,2010

AND

IN THE MATTER OF LAW REFORM ACT CAP 26 SECTION 8 AND 9

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO.4 OF 2015 AND IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

BETWEEN

JOSEPHAT BARASA KOMBO APPLICANT

AND

PRINCIPAL SECRETARY, STATE DEPARTMENT FOR TECHNICAL VOCATIONAL EDUCATION TRAINING 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT



RULING

1. The applicant herein filed a notice of motion application dated 27th February 2024 seeking the following orders;
 - a. That this application be certified urgent and heard *ex parte* in the 1st instance, service thereof dispensed with.
 - b. That the lord justice be pleased to issue an injunction against the 1st Respondent herein restraining it, its agents, employees, and anyone claiming through from taking and/or continuing any disciplinary proceedings against the applicant pending hearing this application inter parties.
 - c. That the Lord Justice be pleased to issue an injunction against the 1st Respondent herein to restrain him, his agents, employees, and or anyone claiming through them from taking and or continuing any disciplinary action against the applicant pending the hearing and determination of the substantive application herein dated 7/11/2024.
 - d. That costs be provided for
2. The application was supported by an affidavit sworn on the same date, where the applicant avers that he is an employee of Kibabi University effective from 15/7/2015 and that the 1st respondent has since commenced disciplinary proceedings against him via a show cause letter.
3. He claims that he has since filed a judicial review against the 1st respondent because he is no longer an employee and that the show cause letter, which was addressed to the vice chancellor at Kibabi University, was of bad faith and would interfere with his current career.
4. He claims that the current application was made to stop the disciplinary process for which he had been invited before a disciplinary panel to hear the matter.
5. He has filed this application praying for an injunction against the 1st respondent to stop any disciplinary hearing against him pending the hearing of the matter inter parties.
6. I have perused the application for determination and note that the issues raised by the applicant are on a disciplinary process during and after the course of his employment. I note that this case is predominantly related to issues surrounding his employment at Bungoma National Polytechnic.
7. Article 165(5) of *the Constitution, the Constitution* provides as follows: -
 5. The High Court shall not have jurisdiction in respect of matters-
 - a. reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - b. falling within the jurisdiction of the courts contemplated in Article 162 (2).”
8. In this case, the matter falls within the purview of the courts contemplated under Article 162(2) of *the Constitution*, which posits as follows:
 2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to
 - a. employment and labor relations; and



b. the environment and the use and occupation of, and title to, land.”

9. I must point out that the issue of jurisdiction was not raised by the parties; however, the issue of jurisdiction is an issue of law, consequently, the court can, on its own motion, address it.

10. The law of jurisdiction is well settled. A court must be possessed of jurisdiction at the first instance; it determines whether a judge should keep holding or downing its tool. The case of Owners of Motor Vessel “Lilians” v Caltex Oil (Kenya) Limited 1989, the Court held thus: -

“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 puts down its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”

11. The Employment and Labor Relations Court was established under article 162 (2)(a) as a court with the status of the High Court to hear and determine disputes relating to employment and labor relations and its jurisdiction is spelled out under section 12(1) and (2) of the Employment and Labor Relations [Act, No. 20 of 2011](#) as follows: -

“1. 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 organization;
- d. disputes between trade unions;
- e. disputes between employer organizations;
- f. disputes between an employers’ organization and a trade union;
- g. disputes between a trade union and a member thereof;
- h. disputes between an employer’s organization or a federation and a member hereof;
- i. disputes concerning the registration and election of trade union officials; and;
- j. disputes relating to the registration and enforcement of collective agreements.

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



12. Section 12(3) of the Employment and [Labour Relations Act](#), No. 20 of 2011 provides for the powers of the court as follows: -

“In exercise of its jurisdiction under this Act, the Court shall have power to 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 circumstances contemplated under this Act or any written law;
- vi. an award of damages in any circumstances contemplated under this Act or any written law;
- vii. an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the court thinks fit to impose under circumstances contemplated under any written law; or
- viii. any other appropriate relief as the court may deem fit to grant.”

13. In the Court of Appeal case, [National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others \(Civil Appeal 656 of 2022\)](#) [2023] KECA 80 (KLR):

“The jurisdiction of the courts of equal status was jealously guarded by [the Constitution](#). Article 165(5)(b) of [the Constitution](#) in peremptory terms provided that the High Court did not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in article 162(2) of [the Constitution](#).

In terms of [the Constitution](#), the ELRC was constrained in its decision-making power by the supremacy of [the Constitution](#)(article 162(a)) and the rule of law. It was further constrained by legislation (section 12 (1) (a)-(f)) of the ELRC Act, the common law, precedents, and procedural rules. When examining the jurisdiction conferred on the ELRC by section 12(1) (a)-(f), the word “includes” had to be borne in mind. However, there could not be any inflexible rule that the word “includes” should always be read as a word of extension without reference to the context.”

14. I have examined all the evidence presented by the applicant herein. The applicant herein has averred that he is being subjected to an unfair disciplinary process, and the show cause letter, which was addressed to his current employer, would sabotage his employment.

15. The issue raised by the applicant squarely arises out of his employment by the 1st respondent, which falls under the purview of the employment court.



16. The Supreme Court of Kenya in Application No.2 of 2011 involving Samuel Kamau Macharia v KCB and Others [2012] eKLR as follows:

“ A Court’s jurisdiction flows from either *the Constitution* or Legislation, or both. Thus, a Court can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

...the Court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”

17. There is no basis for having employment employment-related case in this court. Consequently, the Application dated 27th February 2024 is stuck out.

18. There will be no order of costs.

19. This file is closed.

20. Right of Appeal 14 days.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 10TH DAY OF JULY, 2025.

S.N. MBUNGI JUDGE.

In the presence of:

Mr Mutoka for the Appellant present online.

Court Assistant – Elizabeth Agong’a

