



**Mwambingu v County Assembly of Taita Taveta & 2 others (Constitutional
Petition E009 of 2023) [2024] KEHC 3095 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CONSTITUTIONAL PETITION E009 OF 2023
GMA DULU, J
MARCH 13, 2024**

BETWEEN

PHILEMON MADEDA MWAMBINGU PETITIONER

AND

COUNTY ASSEMBLY OF TAITA TAVETA 1ST RESPONDENT

GOVERNOR OF TAITA TAVETA COUNTY 2ND RESPONDENT

TAITA TAVETA COUNTY GOVERNMENT 3RD RESPONDENT

RULING

1. In response to a Petition and Notice of Motion both dated 27th July 2023 and filed on same date, the 1st respondent through counsel filed a Notice of Preliminary Objection dated 23rd August 2023. This Preliminary Objection is the subject of this present ruling of today.
2. As a background, the petitioner herein has been an employee of the County Government of Taita Taveta, and in June 2023 was served with a letter to appear before the Tourism Committee of the County Assembly (1st respondent) to explain matters relating to allegations against him in the performance of duty and was questioned and one of the recommendations of the committee was for him to vacate office forthwith as Head of Protocol on the allegation that he did not have minimum requirements for the position he currently holds.
3. He thus filed the present Constitutional Petition seeking:-
 - a. A declaration as unlawful, null and void the report of the Tourism Committee of Taita Taveta County adopted by the 1st respondent on the 18th July 2023 in so far as its recommendation relating the removal of the petitioner as Head of Protocol.



- b. A declaration as unlawful, null and void the resolution of the 1st respondent passed on 18th July 2023 adopting the Tourism Committee report recommending the removal of the petitioner as Head of Protocol to the 2nd respondent.
 - c. An order prohibiting the 2nd and 3rd respondents from receiving and/or having received, then from taking or conducting or acting on and/or effecting the resolution of County Assembly of Taita Taveta of 18th July 2023 recommending removal of the petitioner as Head of Protocol of the 2nd respondent.
4. The petitioner also, at the same time, filed a Notice of Motion seeking interim injunctive and conservatory orders.
 5. As stated earlier, in response, the 1st respondent filed Preliminary Objections, which are three (3) in number as follows:-
 1. The honorable court lacks jurisdiction to hear and determine this matter pursuant to Article 162 (2) (a) and (3), 165(5)(b) of *the Constitution*.
 2. The nature of the Petition and the Notice of Motion raises the issue bordering on dispute between an employer – employee and that the same ought not to be constitutionalized.
 3. The honourable court is divested of jurisdiction to hear and determine this matter by Section 12 and 13 of the *Employment and Labour Relations Court Act* No. 20 of 2011.
 6. The objection was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Githumbi Gachaga & Achoki Advocates for the 1st respondent and the submissions filed by Mwinzi & Associates Advocates for the petitioner.
 7. This being a preliminary objection, it has to be weighed against what was stated in the case of Mukhisa Biscuits Manufacturing Company Ltd =Versus= West End Distributors Ltd (1979 EA 696. It has to be a point of law, wherein all the facts have been agreed, which if decided upon will determine the case. In my view, jurisdiction being everything as was stated in the case of Owners of Motor Vessel Lilian “S” =Versus= Caltex Oil Ltd (1989) KLR1, the issues raised above constitute a proper Preliminary Objection, as if I find no jurisdiction in this court, the matter will end there.
 8. The question that has to be determined is, does this court have jurisdiction to determine this matter? The Kenyan, law has developed over time, and in 2010 Kenyans conferred on themselves a new Constitutional dispensation.
 9. Under Article 165(2) and Article 165(5)(b) of *the Constitution* the jurisdiction to adjudicate on any employment and labour related matter was conferred on and reserved to the Employment and Labour Relations Court.
 10. From then on, the High Court ceased to be the place at which employment and labour related cases are to be handled, as there exists a special forum for adjudication on such matters.
 11. Though I am aware that the petitioner has come to this court through a constitutional petition herein, I find that his allegations against violation of his rights herein are not primarily constitutional, but relate to issues to do with proper or lawful procedure to be followed in termination of a contract of service or employment, which is governed by employment and labour relations laws, which laws in my view fully covers his rights and obligations, as well as his reliefs for wrongful acts done, in that employment relationship.



12. Thus this being a primarily employment and intended termination of employment matter, I find that this court is not the right forum for the petitioner, as this court has no jurisdiction to adjudicate on this matter as there exists a specific forum established by the Constitution also deal with employment matter. I thus find that the proceedings herein to have been filed in the wrong forum which has no jurisdiction. I strike out the case, and order that each party will bear their respective costs herein. Any interim orders issued are hereby vacated.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF MARCH 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Ms. Wambura holding brief for Mr. Mwinzi for petitioner

Ms. Gachaga holding brief for Ms. Kasyoka for 1st respondent

