



**Jumwa v County Assembly of Taita Taveta & 2 others (Constitutional
Petition E007 of 2023) [2024] KEHC 6922 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 6922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CONSTITUTIONAL PETITION E007 OF 2023**

GMA DULU, J

APRIL 11, 2024

BETWEEN

THOMAS MNYAMBU JUMWA PETITIONER

AND

COUNTY ASSEMBLY OF TAITA TAVETA 1ST RESPONDENT

GOVERNOR OF TAITA TAVETA COUNTY 2ND RESPONDENT

TAITA TAVETA COUNTY GOVERNMENT 3RD RESPONDENT

RULING

1. This Petition and Notice of Motion both dated 27th July 2023, were filed on the same date, by the petitioner Thomas Mnyambu Jumwa through counsel Mwinzi & Associates Advocates, challenging actions taken and intended to be taken by the respondents.
2. The petitioner herein being an employee of the County Government of Taita Taveta, as Economic Advisor of the Governor, was in June 2023 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 be suspended from office and to be surcharged for money spent during World War I memorial activities.
3. He thus filed proceedings through the present Constitutional Petition seeking orders as follows:-
 - 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 to the suspension of the petitioner as an Economic advisor and surcharging of the money expended during World War I celebrations.



- 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 suspension of the petitioner as an Economic Advisor to the 2nd respondent and surcharging him money expended during World War I celebrations.
 - 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 suspension of the petitioner as an Economic Advisor of the 2nd respondent and surcharging the petitioner for the money expended during World War I celebrations.
4. The petitioner simultaneously filed a Notice of Motion seeking interim injunctive and conservatory orders.
 5. In response to the Petition and Notice of Motion, the 1st respondent the County Assembly filed Preliminary Objections, as follows:-
 1. The court lacks requisite jurisdiction to hear and determine the motion dated 31st July 2023 and the entire petition.
 2. The honorable court is devoid of jurisdiction pursuant to the express provisions of Article 165(5) (6) & (7).
 3. The court is devoid of jurisdiction pursuant to the express provisions of Section 12(1) of the Employment & Labour Relations Court Act No. 20 of 2011.
 4. The court is devoid of jurisdiction pursuant to the express provisions of Section 87 of the Employment Act No. 11 of 2007.
 5. The entire suit is bad in law, incompetent, frivolous & vexatious and the same is otherwise an abuse of court process.
 6. This court issued directions that the Preliminary Objection be heard first and the same was canvassed through written submissions. I have perused and considered the submissions filed by Sharia Nyange Njuguna & Company Advocates for the 1st respondent and the submissions filed by Mwinzi & Associates Advocates for the petitioner. I have to acknowledge that both sides relied on decided court cases.
 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 (1969) EA 69. The objection has to be on a point of law, wherein all the facts have been agreed, which if decided upon will determine the whole case.
 8. 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 by the 1st respondent constitute proper Preliminary Objections as, if I find that this court has no jurisdiction, the matter will end there and I will have to down my tools.
 9. The question that has to be determined under the objections raised is, does this court have jurisdiction to entertain this matter? Jurisdiction of courts arises from the Constitution and written laws. The Kenyan, law has developed over time, and in 2010 Kenyans conferred on themselves a new constitutional dispensation.



10. In accordance with the new constitutional dispensation 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 upon and reserved for the newly created Employment and Labour Relations Court which is a court of equal status to the High Court. The jurisdiction of the High Court under the same Article 165 of *the Constitution* was circumvented not to cover employment and labour related matters.
11. Thus from then on, the High Court ceased to be the place or one of the places at which employment and labour related cases are to be handled, as there now exists a specialized forum for adjudication on such matters, and the High Court is debarred from dealing with such matters and also has no supervisory or review jurisdiction over employment and labour relations matters.
12. 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 primarily relate to issues to do with proper or lawful procedure to be followed and sanctions in contracts 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, and whose disputes can only be adjudicated on in the Employment & Labour Relations Court and not the High Court.
13. This being primarily an employment and intended disciplinary action matter, I find that this court is not the right forum for the petitioner, as this court has no jurisdiction to adjudicate on the same since there exists a special forum, established by *the Constitution* to deal with such matters, to the exclusion of the High Court. I thus find that the proceedings herein were instituted in the wrong forum which has no jurisdiction. I accordingly strike out the petition and the accompanying Notice of Motion. I however order that each party will bear their respective costs herein in this employment matter. Any interim orders issued by this court are hereby vacated.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF APRIL 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Mr. Mutinda holding brief for Mr. Mwinzi for petitioner

Mr. Nyange for 1st respondent

