



**Odongo & 9 others v County Government of Homa Bay & 3 others
(Petition E001 of 2023) [2023] KEHC 19912 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PETITION E001 OF 2023**

KW KIARIE, J

JULY 12, 2023

BETWEEN

PAUL OLELA ODONGO & 9 OTHERS PETITIONER

AND

COUNTY GOVERNMENT OF HOMA BAY & 3 OTHERS RESPONDENT

RULING

1. The respondents herein raised a preliminary objection dated June 9, 2023 premised on the following grounds:
 - a. That the instant petition and application dated June 5, 2023 offends the provisions of Article 162(2) of the *Constitution of Kenya* and ought to be dismissed with costs.
 - b. That this court lacks jurisdiction to hear and determine the petition and application dated June 5, 2023 on account that the petitions revolves around recruitment and employment issues.
 - c. That the petition and the application dated June 5, 2023 does not disclose any constitutional issue and fails to meet the test in settled case of *Annarita Karimi* and ratio decidendi in Court of Appeal decision in *NSSF vs Kenya Tea Growers Association & 14 others*.
 - d. That the instant petition and application dated June 5, 2023 is fatally defective and bad in law for breach of the doctrine of exhaustion and such, this court lacks jurisdiction to hear and determine the matter.
2. The preliminary objection was opposed on grounds that this court has jurisdiction to hear and determine this application.



3. A preliminary objection must be on a point of law and nothing more. This was clearly stated in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969]EA 696. At page 700 paragraph D-F Law, JA as he then was, stated:

"....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 of the suit. Examples are an objection to the 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."

4. Article 162(2) of the *Constitution* provides:

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

- (a) a) employment and labour relations; and
- (b) b) the environment and the use and occupation of, and title to, land.

5. The respondents have argued that the issues that were raised by the petitioners of the suitability relate to matters of employment and that therefore they ought to be canvassed in the Employment and Labour Relations Court. They have argued that this court is not seized of jurisdiction in this matter.

6. It was further contended for the respondents that the petition and the application dated June 5, 2023 does not disclose any Constitutional issue and fails to meet the test in settled case of *Annarita Karimi* and *ratio decidendi* in Court of Appeal decision in *NSSF vs Kenya Tea Growers Association & 14 others*.

7. Section 12 (1) of the *Industrial Court Act, 2011* sets out 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' organisation and a trade unions organisation;
- (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.



8. The Court of Appeal in the case of *Attorney General & 2 others v Okiya Omtata Okiiti & 14 others* [2020] eKLR Stated:

"What all this suggests to us is that the appointment and removal from office of the commissioners of these independent commissions is not a labour and employment issue as the ELRC erroneously held, but a special constitutional innovation, a sui generis devise to address challenging governance needs and gaps. The appointment of the chairperson and members of the Commission did not involve any of the parties or raise any of the employment and labour relations issues contemplated by section 12 of the *Act*. With due respect, it was completely off the mark for the learned judge to hold that the recruitment of the chairperson and members of the commission raised employment and labour relations issues merely because they were to be remunerated from the Consolidated Fund. On the parity of that reasoning, the election or removal from office of the President of the Republic or appointment and removal of Judges of the Superior Courts would amount to employment and labour relations issues, merely because they are remunerated from the consolidated fund."

9. Going through the complaints raised by the petitioners herein, I find that the issues raised therein are not contemplated under section Section 12 (1) of the *Industrial Court Act, 2011*.
10. The preliminary objection is therefore dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 12TH DAY OF JULY, 2023.

KIARIE WAWERU KIARIE

JUDGE

