



Keter & 20 others v Finlays (Kenya) Limited & another; Federation of Kenya Women Lawyers & 3 others (Interested Parties) (Constitutional Petition 2 of 2023) [2023] KEHC 22429 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22429 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CONSTITUTIONAL PETITION 2 OF 2023
JK SERGON, J
SEPTEMBER 20, 2023**

BETWEEN

SAMMY KIPLANGAT KETER 1ST PETITIONER
ALICE CHEMELI MARTIM 2ND PETITIONER
NANCY NJERI 3RD PETITIONER
CECILIA CHEPKORIR NGENO 4TH PETITIONER
JACOB ODONGO OPERE 5TH PETITIONER
GRACE AKINYI OPERE 6TH PETITIONER
TERESIA ATELO NYANGWESO 7TH PETITIONER
BRENDA CHEPKOECH MUTAI 8TH PETITIONER
CAROLINE KOSKEI 9TH PETITIONER
FLOMENA ANNA CHEPNGENO CHUMO 10TH PETITIONER
LILY LANGAT 11TH PETITIONER
DAVID KIPNGENO LANGAT 12TH PETITIONER
DAVID ARONSIO ONYANCHA 13TH PETITIONER
ALICE CHEBET TARUS 14TH PETITIONER
MILLICENT CHEPTOO 15TH PETITIONER
GLADYS BWARI ONYWOKI 16TH PETITIONER
JESCAH ASIKO OPWONDI 17TH PETITIONER
LOICE ATAMBITSA 18TH PETITIONER



LINA CHELANGAT KIRUI 19TH PETITIONER
NORA CHEMUTAI SOI 20TH PETITIONER
EVALINE KWAMBOKA 21ST PETITIONER

AND

FINLAYS (KENYA) LIMITED 1ST RESPONDENT
EKATERRA TEA KENYA PLC 2ND RESPONDENT

AND

FEDERATION OF KENYA WOMEN LAWYERS INTERESTED PARTY
HUMAN RIGHTS COMMISSION INTERESTED PARTY
KENYA PLANTATION & AGRICULTURAL WORKERS
UNION INTERESTED PARTY
RAIN FOREST ALLIANCE INTERESTED PARTY

RULING

1. This ruling is the outcome of two notices of preliminary objection. The first is dated March 23, 2023 in which the 2nd respondent argued that the petition dated 7/3/2023 and amended notice of motion dated 13/3/2023 are bad in law as this court lacks jurisdiction to entertain the same.
2. The 2nd respondent put forward the following grounds:-
 - i. The application and the petition raise constitutional issues arising from and/or in respect of an employer-employee relationship.
 - ii. The Employment and Labour Relations court, by virtue of article 162 (2) of *the Constitution* of Kenya, 2010 and section 12 (1) of the *employment and Labour Relations Court Act* No.20 of 2011, has exclusive original and jurisdiction to hear and determine all disputes relating to Employment and Labour Relations, including Constitutional matters arising therefrom.
 - iii. The High court lacks jurisdiction, by virtue of article 165 (5) (b) of *the Constitution* of Kenya, 2010 to deal with matters that fall within the ambit of the employment and Labour Relations Court.
3. The second notice of preliminary objection is dated April 24, 2023 in which the 1st respondent challenged the amended motion dated March 27, 2023 and the amended petition dated March 13, 2023 and relied on the following grounds:-
 - i. The alleged 1st Respondents though served with pleadings herein is not known by the name “Finlys (kenya) Ltd.”
 - ii. The High court lacks jurisdiction to entertain the suit by virtue of article 162 (2) (a) read together with article 165 (5) (b) of *the Constitution* since the subject matter in dispute relate to Employment and Labour Relations.



4. When the aforesaid notices came up for hearing, parties opted to file written submissions. I have considered the rival written submissions plus the grounds stated on the two notices.
5. The main ground raised in the notices of preliminary objection is to the effect that the issues in dispute are matters which belong to the Employment and Labour Relations Court under article 162(2) of *the Constitution* of Kenya, 2010 and under section 12 (1) of the *Employment and Labour Relations Act* No.20 of 2011.
6. The 1st and 2nd Respondents averred that this court lacks Jurisdiction to entertain the dispute under article 165 (5) (b) of *the Constitution* of Kenya, 2010.
7. It is the submission of the 1st respondent that the suit is based on breaches arising out of employment relationships, therefore the High court lacks Jurisdiction to hear and determine the instant Petition together with the applications emanating therefrom.
8. The 1st respondent urged this court to strike out the petition and any subsequent pleadings emanating therefrom.
9. The 2nd respondent also submitted that the High Court is devoid of Jurisdiction to hear and determine the dispute between the parties in the instant petition.
10. The 2nd respondent pointed out that the matters raised in the petition and the subsequent application relate to an employment relationship between the Respondent, the Petitioners.
11. This court was urged to dismiss the petition on the basis that the court is bereft of Jurisdiction. The 2nd respondent further stated that the Employment and Labour Relations court can hear and determine any claims under *the Constitution* in respect of alleged violation of fundamental rights and freedoms under chapter 4 of *the Constitution* which arise from an Employment Relationship.
12. In Response to the 1st and 2nd respondent's submissions over the notices as the preliminary objection, the petitioners are of the submission that there is no express provisions giving Jurisdiction to Employment and Labour Relations Court to entertain hear and determine the questions whether a right or fundamental freedom in the Bill of rights has been denied, infringed or threatened.
13. The petitioners further argued that the High Court Jurisdiction to entertain the instant petition since the petitions are basically inviting this court to determine the questions whether a right, fundamental freedom in the Bill of rights has been denied, violated, infringed or threatened.
14. It is apparent that the petitioners in the further amended petition dated April 19, 2023 in paragraph 1 aver as follows:-
 - “ 1. The petitioners are Kenyan Citizens Ordinarily residing in Kericho County within the Republic of Kenya and are workers or were at same point workers of the 1st and 2nd Respondents. The Petitioners present this Petition on their own behalf and in the interest of 12,000 women workers who are discontented with the high levels of impunity in Kenya and in the Public Interest bearing their responsibility Under article 3, 10, 22 and 258 of *the constitution* to respect, uphold and defend *the Constitution*.”
15. In paragraph 79 and 92 of the further amended petition which the petitioners listed the alleged violations of rights and fundamental freedoms committed by the 1st respondent against them in the course of the Petitioners employment.



16. There is no dispute that Under article 162 (2) (b) of *the constitution* of Kenya, 2010, the employment and Labour Relations court is given exclusive Jurisdiction over disputes relating to employment and Labour Relations.
17. I am of the view that once *the Constitution* and the Act, has given exclusive Jurisdiction over employment disputes to the Employment and Labour Relations court, that Jurisdiction encompasses disputes pertaining to violation of rights and fundamental freedoms.
18. The High Court does not therefore have jurisdiction to entertain the present suit by virtue of the Express Provisions of article 165 (5) (b) of *the Constitution* of Kenya, 2010.
19. I am persuaded by the argument put forward by the 2nd respondent that the Jurisdiction of the Employment and Labour Relations to hear and determine Constitutional Matters arising out of employment relationships is settled by judicial pronouncements.
20. In the case of *International Centre for Insect Physiology and Ecology (ICIPE) =VS= Nancy MCnally* (2018)eKLR the court of appeal expressed itself as follows:-

“There cannot be any argument that the ELRC is clothed with Jurisdiction to hear and determine such Constitutional issues as an when they arise from Employment and Labour Relations. Any doubts on that Jurisdiction were settled in the case of *United States International University (USIU) -vs- Attorney General* (2012)eKLR.” which was upheld by this court in *Daniel N. Mugendi v Kenyatta University & 3 others* [2013]eKLR.”
21. In the end, I find the two notices of preliminary objections to be meritorious. I uphold the preliminary objections and proceed to dismiss the amended petition dated 13/3/2023 and the further amended petition of even date together with all the applications emanating from those petitions.
22. In the circumstances of this matter, a fair order on costs is to order which I hereby do that each party meets its own costs.

Dated, Signed and Delivered Virtually this 20th day of September, 2023.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

