



REPUBLIC OF KENYA



**Otwala v County Assembly of Trans Nzoia & others (Petition
26 of 2024) [2024] KEHC 15316 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15316 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
PETITION 26 OF 2024
RPV WENDOH, J
NOVEMBER 20, 2024**

BETWEEN

TRUPHOSA IRENE AWUOR OTWALA PETITIONER

AND

COUNTY ASSEMBLY OF TRANS NZOIA & OTHERS RESPONDENT

RULING

- 1 The Petitioner, Truphosa Irene Awuor Otwala, through the firm of Alakonya Associates approached this court on 6/11/2024 with this petition of even date. In the petition she seeks the following orders;
 1. A declaration be made that the Petitioner is not and cannot be a subject of impeachment proceedings by the Respondents.
 2. An order of Certiorari to issue quashing the motion of Impeachment brought before the 1st Respondent on 5th November, 2024
 3. An order of Prohibition to issue prohibiting the 2nd Respondent and or his deputy or any person acting in that behalf and or agent from entertaining and or presiding over or in any way whatsoever from hearing impeachment or removal from office proceedings as against the petitioner in her capacity as County Secretary.
- 2 Filed simultaneously with the petition is the Notice of Motion dated 6/11/2024. By the said motion the Petitioner/applicant sought the following orders
 1. That pending the hearing and determination of this application, this Honourable court be pleased to issue conservatory orders against the Respondents prohibiting them from instituting, hearing, making findings and or recommendation or in any way whatsoever interfering with the Petitioner's contract of employment.



2. That pending the hearing and determination of the herewith petition, this Honourable court be pleased to issue conservatory orders against the Respondents prohibiting them from instituting, hearing making findings and or recommendation or in any way whatsoever interfering with the Petitioner’s contract of employment.
3. That this court do grant such other or further orders it may deem fit in the interest of justice
- 3 After service of the Petition, the Respondents through the firm of Katama Ngeywa Advocates, filed a Replying Affidavit, Notice of Preliminary Objection and submission on the Preliminary objection on 7/11/2024.
- 4 The court gave directions that the Preliminary Objection be taken up first and on 8/11/2024 the Counsel argued the Preliminary Objection. Before addressing the court on the Preliminary Objection, the court asked Counsel to address the court on the question of Jurisdiction on whether the issues are an employment matter and therefore before the wrong forum.
- 5 Mr. Katama in passing, urged that the issues before the court relate to employment and this court lacks jurisdiction to entertain the same.
- 6 Mr. Simiyu in his address relied on Article 165 (3) of *the Constitution* urging that this court has unlimited jurisdiction in all matters.
- 7 Jurisdiction of the court is conferred by *the Constitution*, Acts of Parliament or both and may be limited or unlimited in like manner. Article 162(2) of *the Constitution* provides as follows; -
- Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to;
- a. Employment and labour relations”
- 8 Pursuant to the above article, Parliament passed the Employment and *Labour Relations Act*, which in addition to establishing the court, sets out the jurisdiction of the court as follows;
- 12 Jurisdiction of the court
- SUBPARA (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 of the court relating to employment and labour relations including
- SUBPARA (a)
- disputes relating to or arising out of employment between an employer and employee;
- 9 Section 12 of the employment and *labour relations Act* gives the Environment and Labour Relations Court (ELRC) jurisdiction to hear and determine all disputes for as long as the dispute relates to employment and goes ahead to give examples of the disputes to include a dispute between employer and employee.
- Section 12 (3) of the Act provides the various orders that the court can grant which includes,
- i. Interim preservation orders.
- ii. Prohibitory orders



SUBPARA iii.

Order of specific performance.

iv. Declaratory orders (viii) and

v. any other appropriate relief as the court may deem fit to grant”

10 In my view the above means that the court can grant orders relating to breach of fundamental rights that relate to employment just as the High Court can grant orders for breach of fundamental rights in other situations.

11 A cursory look at the prayers sought clearly demonstrates that the applicants are trying to stop their removal from office/employment through impeachment or otherwise. The interim orders seeks to stop interference with their contracts of employment. In the petition prayer 3 is a challenge to impeachment or removal from office of the County Secretary

12 In the celebrated case of Owners of Motor Vessel “Lilian S” V. Caltex Oil Kenya Ltd, (1989) eKLR, the court stated “I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized by the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. In that 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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

In Speaker of National Assembly – Vs – Karume Cr. Appl. 92/1992 the court said: -

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.

Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedure”.

13 The above is a principle that has been accepted by all courts.

14 In this case, the ELRC court is armed with jurisdiction to hear matters employment but not this court. For that reason, I down my tools and the interim order lapses automatically. Instead of striking out this petition, I will direct that the same be transferred to the ELRC court Eldoret

15 Since this court has no jurisdiction, I did not see the need to delve in the other issues raised in the Preliminary objection.

It is so ordered.

DELIVERED, SIGNED AND DATED AT KAPENGURIA THIS 20TH DAY OF NOVEMBER, 2024

R. WENDOHO.

JUDGE

Ruling delivered in the presence of :-

Petitioner – Mr. Simiyu / Mr. Waswa

Respondent -Katama Ngeiwa/ Lichuma Mafumbo

Court Assistant - Juma/Hellen

