



**Kasango v National Executive Council, KJSA & another (Petition  
2 of 2019) [2019] KEHC 3146 (KLR) (2 April 2019) (Ruling)**

*John Ogutu Kasango v National Executive Council, KJSA & another [2019] eKLR*

Neutral citation: [2019] KEHC 3146 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE**

**PETITION 2 OF 2019**

**HK CHEMITEI, J**

**APRIL 2, 2019**

**BETWEEN**

**JOHN OGUTU KASANGO ..... PETITIONER**

**AND**

**THE NATIONAL EXECUTIVE COUNCIL, KJSA ..... 1<sup>ST</sup> RESPONDENT**

**JUDICIAL SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By its preliminary Objection dated 28/1/2019, the 1<sup>st</sup> Respondent prayed that the entire petition be struck out for the simple reason that this court lacks the requisite jurisdiction to determine the dispute herein. It is alleged that the 1<sup>st</sup> Respondent is registered under the [Societies Act](#) Cap 108 and therefore, the same ought to be adjudicated under the said Act.
2. The parties did proceed by way of oral submissions in which it alleged that the applicant was not a member of the society and thus he did not have capacity to litigate.
3. That the Provisions of Section 48 of the [Societies Act](#) allowed any man to inspect the register of the Society and any filed documents.
4. In a nut shell all that the Respondent stated was that it shall be appropriate to subject this matter to the dispute mechanism as provided by Cap 108.
5. The Applicant who was acting in person stated that he was a fully paid up member and that the Provision of Article 63(2) (3) (b) grants this court the jurisdiction to determine the same. He said that by not providing the requisite accounts as requested, the 1<sup>st</sup> Respondent breached his and other members fundamental rights.



6. The court has perused the entire petition, the Notice of Motion and the relevant rival affidavits. The issue raised by the applicant is the question of Accounts. According to him the 1<sup>st</sup> Respondent has not provided any accounts despite receiving Kshs 200 per month from the members.
7. For the reasons I shall explain below I shall not wade into the petition. Suffice to state that, with profound respect, I do not think that the Provisions of the Societies Act oust those of the Constitution. The question of Accounts is so fundamental that every party more so the members have a right of knowing .
8. I have read the annexures attached to the affidavits and I do not see any that shows that the 1<sup>st</sup> Respondent has carried out any audit for the period demanded by the Applicant.
9. Be it as it may, I find that based on the weighty issues of accounts and the need for transparency, it is necessary that the matter should go the long haul. It will be premature to terminate the same by way of preliminary Objection raised herein.
10. Article 22 of the Constitution on Enforcement of Bill of Rights is so wide that any Kenyan could demand to know any information from any relevant entity on long as proper channels are applied.
11. For now I disallow the Preliminary Objection herein.
12. Meanwhile I note that the issues herein are clear and straight forward, namely, the accounts question. The matter could be mediated upon by a court appointed mediator. This court is alive to the fact that the Court Annexed Mediation Registry is now at Eldoret High Court Registry.
13. It shall in my view be quick and fast to have a mediator resolve this matter as the 1<sup>st</sup> Respondent has control and interest of all court staff. There is nothing to hide if indeed the accounts are well prepared and kept.
14. Consequently, I shall refrain from issuing any precipitate orders as prayed by the applicant. I refer this matter to the Deputy Registrar Eldoret High Court, Court Annexed Mediation Registry for the appointment of a mediator.
15. The parties shall subject themselves to the said mediator pursuant to the directions of the Registrar.
16. The costs shall be in the cause.

**DELIVERED, SIGNED AND DATED AT KITALE THIS 2<sup>ND</sup> DAY OF APRIL, 2019.**

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**H.K. CHEMITEI**

**JUDGE**

**2/04/19**

In the presence of;

Wanjala holding brief for Saluny for 1<sup>st</sup> Respondent

No appearance for the Applicant

Court Assistant – Kirong

