

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 41 OF 2019

AGGREY AJWANG JUMA PETITIONER

VERSUS

KENYA RAILWAYS CORPORATION..... RESPONDENT

RULING:

1. I have perused the petition herein by the Petitioner and the reliefs sought. I note that the dispute relates to **Employment and Labour relations**, couched as a Constitutional Petition. Be as it may, **Article 162(2)(a) of the Constitution** empowers the Employment and Labour Relations Court to hear and determine such disputes whether Constitutional Petitions or Otherwise.

2. In addition, **Article 165(5)(b) of the Constitution** expressly bars the High Court from hearing and determining disputes exclusively reserved for the **Courts contemplated in Article 162 of the Constitution**.

3. The Petition herein can safely be heard and determined by the Employment and Labour Relations Court, pursuant to **Section 12(1)(2) and (7) of the Employment and Labour Relations Court Act**.

4. Accordingly, I decline to hear and determine this Petition on account of jurisdiction and direct that the Petitioner shall refile his petition before an Employment and Labour Relations Court at Kisumu at no extra cost since he has already paid Court fees to the Judiciary.

5. This is in line with **Article 48 of the Constitution** which stipulate that the State shall facilitate access to justice and where a fee is required, it shall not be excessive.

6. This Court observes that the Petition is eclectic and therefore the Petitioner believed that the High Court could hear and determine it. However, as jurisdiction is not conferred by parties but by the **Constitution and Statute**, I order this Petition withdrawn from this Court to be placed before Employment and Labour Relations Court, Kisumu for further disposal.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 8TH DAY OF OCTOBER, 2019.

R.E. ABURILI

JUDGE