



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

PETITION NUMBER 6 OF 2013

CHRISTOPHER ABUYEKA ANGAYAPETITIONER

VERSUS

TEACHERS SERVICE COMMISSIONRESPONDENT

R U L I N G

Background

1. The Petitioner is a teacher by profession having been employed by the Teachers Service Commission the Respondent herein in 1988 as a P1 teacher vide T.S.C. No.269525. His first posting was at Masera primary school where he taught for seven (7) years and thereafter he was transferred to [particulars withheld] primary school where he taught for over sixteen years.
2. Sometime in the year 2011 while he was a class teacher for class seven at [particulars withheld] primary school allegations were raised against him by one R. M a student. On 4th April 2011 he was arrested for allegedly having carnal knowledge said of the student but he was later released because there was no evidence linking him to the allegation. He was informed that no charges would be preferred against him as the allegations were borne out of malice.
3. He was however later summoned to the P.CIO's office on the same allegations where investigations showed that the allegations were false. His file was referred to the Office of the Director of Public Prosecution where the Senior Principal Prosecution Counsel exonerated him.
4. The Respondent without according him a chance to defend himself went ahead and issued him with various letters which eventually led to his interdiction and dismissal. Investigations carried out by the Police showed that the accusations leveled against him were framed up and that the respondent never undertook any form of investigations before dismissing him. Being aggrieved by the Respondent's decision to dismiss him, the petitioner commenced these proceedings.

The Petition

5. The petition was filed on the 6th of May 2013 where the petition seeks inter alia for:-
 - a. A declaration that the dismissal of the petitioner by the respondent was unjust unwarranted and grossly violated the constitution.
 - b. An order directing the respondent to unconditionally reinstate the applicant.
 - c. An order directing the respondent to pay the petitioner salary and all dues from the date of dismissal.
 - d. Any other relief that this honourable Court shall deem just and expedient.

It is instructive to note at this point that after the filing of the petition on 07/05/2013, the parties

appeared at the registry on 20/11/2013 and fixed the same for hearing on 06/05/2014. The matter did not however proceed on 06/05/2014, so the parties again appeared at the registry and fixed the petition for hearing on 03/11/2014.

6. On 03/11/2014, the matter came up before me and on that day counsel agreed to canvass the petition by way of written submissions. The respective written submissions were filed and exchanged. The matter was fixed for mention on 04/12/2015 for highlighting of submissions and for taking a judgment date. On the said date, this court was on leave and the matter was again slated for mention on 10/03/2015 for submissions. For some unexplained reason, the matter remained in abeyance until 02/07/2015 when parties appeared at the registry and fixed the matter for direction on 21.10.2015. When the parties appeared before me on 21.10.2015. They asked for a ruling date without highlighting the submissions. Thereafter, the court reserved the ruling to 11.2.2016 as the court felt it needed adequate time to read through the pleadings and the submissions.

7. When this court retired to consider the pleadings and the submissions,. It dawned upon it that the petitioners claim emanates from an employment relationship between himself and the Respondent and immediately the question of jurisdiction of this court to hear and determine the matter arose.

8. The issue of jurisdiction of the various superior courts is governed by the provisions of Articles 162 and 165 of the constitution. The said provisions establish and set out the jurisdiction of each court. The courts have held time and again that, jurisdiction is everything and the moment the court realizes that it has no jurisdiction for any matter that is before it, it should make no further step in the matter , but should down its tools, see owners of Motor Vessels “Lillians” Vrs Caltex Oil Ltd [1989] KLR 1, Peter Odour Ngoge –vrs- Francis Ole Kaparo and 5 others [2012] EKLR and Samuel Kamau Macharia & another – vrs – Kenya Commercial Bank and 2 others [2012] eKLR. The supreme court in the case of Re the matter of the Interim Independent Electoral Commission Constitutional Application No.2 of 2011 at Paragraphs 29 and 30 stated the following;-

[29] Assumption of jurisdiction by Courts in Kenya is a subject regulated by the Constitution, by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in *Owners of Motor Vessel ‘Lillian S’ v. Caltex Oil (Kenya) Limited* [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):“***I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.***

[30] The *Lillian ‘S’* case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

9. In the more recent case of Karisa Chengo and 2 others - v - Republic Malindi Court of Appeal Criminal Appeal Nos, 44,45 and 76 [2014] eKLR the Court of Appeal sitting in Malindi expressed on the issue of jurisdiction as follows;-

To our mind therefore it is clear that the drafters of the Constitution envisaged that there would be Superior Court judges who would possess different professional experience. As for the specialized courts, Parliament envisaged that the judges in those courts would have additional qualifications in terms of experience which judges of the High Court do not necessarily need to have. The law is that these courts need judges with measurable experience in the specific mandate of the Court. This is due to the special and peculiar nature of the disputes handled by the said courts. We have not been urged to find that **section 6** of the Industrial Court Act and **section 7** of

the Environment and Land Court that provide for the professional experience of ELRC and ELC judges over and above what is provided for under **Article 166(2)** of the Constitution unconstitutional. We are aware of the general rule that, what Parliament has enacted in a long process should be deemed to be constitutional unless proved and declared otherwise, which is not the case here. It therefore follows that as long as those provisions continue to exist in our law books they are and remain the law on professional experience that guide the appointment of judges of the ELRC and ELC. The law envisages that the judges of the two specialized courts should be different from judges of the High Court in terms of experience and specialization, with different jurisdictions but the same status. It is also not lost on us that when the vacancies for appointment of judges for the courts were advertised it was left to an applicant to elect and apply to be a judge for the specific court he aspired to join. Having elected that his future lay in ELRC or ELC, it would not be desirable for such a judge to be forced into the High Court to preside over criminal appeals. Further, can it be said that justice would be served to an appellant when a judge whose only flair is either in ELRC or ELC is suddenly empanelled by the Chief Justice to hear a criminal appeal?

10. What the court of Appeal are telling this Court through the above statements is that this court which has the conventional High Court Mandate has no business dealing with the petition herein of course I am fully aware of the provisions of Section 13 of the High Court (Organization and Administration) Act No. 27 of 2015 which gives power to the Honourable the Chief Justice to deploy a judge from one division to another but as of now this court has not been deployed to the Employment and Labour Relations Court so as to have the Jurisdiction to hear and determine the petitioner's claim herein.

11. In the premises and in the interests of justice and it being noted that this court had no prior opportunity to determine the nature of the petitioner's claim, I hereby transfer this case to the ELRC in Kisumu for hearing and final determination. There shall be no orders as to costs.

12. Orders accordingly.

Ruling delivered, dated and signed in open court here at Kakamega this 11th day of February 2016.

RUTH N. SITATI

JUDGE

In the presence of:-

Mr. Munishi for Wafula for the Petitioner/Applicant

Mr. G.P Omondi h/b for Naeku for Respondent

Mr. Lagat - Court Assistant