



**Matindi v National Police Service Commission & another; Lagat & 3 others
 (Interested Parties) (Petition E410 of 2025) [2025] KEHC 13937 (KLR)
 (Constitutional and Human Rights) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13937 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E410 OF 2025

EC MWITA, J

OCTOBER 3, 2025

BETWEEN

ELIUD KARANJA MATINDI PETITIONER

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

ELIUD KIPKOECH LAGAT INTERESTED PARTY

PATRICK TITO INTERESTED PARTY

LAW SOCIETY OF KENYA INTERESTED PARTY

KATIBA INSTITUTE INTERESTED PARTY

RULING

1. On 7th June 2025 Mr. Albert Omondi Ojwang, a resident of Homa Bay county died under unexplained circumstances while in Central Police Station cells. Mr. Ojwang’s arrest followed a complaint Eliud Kipkoech Lagat, Deputy Inspector General Police, in charge of Kenya Police Service (the 1st interested party) to the Director of Criminal Investigations.
2. Mr. Ojwang’s death caused public outrage and investigations commenced with a view to establishing the cause of his death. Some suspects were arrested, including the Officer Commanding Station, Central Police Station where the late Ojwang had been booked but died moments later.



3. On 16th June 2025, the 1st interested party announced that he had “stepped aside” from office as Deputy Inspector General pending completion of investigations on the death of Mr. Ojwang and announced that the 2nd interested party would act as Deputy Inspector General of Police, Kenya Police Service while he (the 1st interested party) was away.
4. The petitioner filed this petition to challenge the constitutionality of the 1st interested party’s actions, arguing that the actions violated several provisions of *the Constitution*, and sought various reliefs.
5. The 2nd respondent, upon being served, filed a notice of preliminary objection challenging the jurisdiction of this court to hear and determine the petition. The substance of the preliminary objection is that the issues relate to employment and therefore fall within the jurisdiction of the Employment and Labour Relations Court (The ELRC) by virtue of article 162 (2) read with 165 (5) of *the Constitution* and sections 12 (1)(2) of the *Employment and Labour Relations Court Act* (the ELRC Act), namely; the status, appointment and duties of the Deputy Inspector General of Police; the right of a public officer to act or remain in office; the legality of remuneration or benefits paid during the period of an alleged unlawful appointment and the issue of disciplinary processes and internal accountability mechanisms within the National Police Service. The preliminary objection was supported by the 1st respondent and the 1st interested party.
6. The respondents and 1st interested party relied on several decisions, including Joyce Mutindi Muthama & another v Josephat Kyololo Wambua & 2 other [2018] eKLR; Mohammed Said v County Council of Nandi [2013] eKLR and Omar Tahir Said v Registrar of Titles & another [2013] eKLR for the position that the matter falls within the jurisdiction of the ELC.
7. They again relied on the decisions in Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR and Peter Gichuki King’ara v Independent Electoral and Boundaries Commission & 2 others [2013] eKLR to support their argument on jurisdiction, contending that under section 12 (3) of the ELRC Act, the ELRC can grant the prayers sought in the petition.
8. The respondents and 1st interested party again cited the decisions in Okiya Omtatah Okoiti v Parliamentary Service Commission & another [2021] eKLR; Daniel N Mugendi v Kenyatta University & 3 others [2013] eKLR; United States International University (USIU) v Attorney General & others [2012] KEHC 5516 (KLR); Ali Jarso Wako & another v Ministry of Interior & Coordination of National Government & 5 others; Public Service Commission & 5 others (Interested Parties) [2020] eKLR and Michael Maina Nderitu v Kenya Power and Lighting Co. Ltd & another [2013] eKLR to buttress their argument that this court has no jurisdiction to preside over this petition.
9. The respondents and the 1st interested party maintained that this court has no jurisdiction over this petition arguing that the issues raised fall within the jurisdiction of the ELRC since the petition challenges, among others, the 1st interested party’s action of stepping aside and his continued receiving remuneration among other concerns. They urge the court to dismiss the petition.
10. The petitioner opposed the preliminary objection maintaining that this court has jurisdiction to hear and determine the petition by virtue of article 165 (3) (a) (b) and (d) (i) (ii) of *the Constitution*.
11. The petitioner asserted that there is no employer-employee relationship in this matter to make it fall within the jurisdiction of the ELRC. According to the petitioner, the issues in dispute are on violation of *the Constitution* and the law by the respondents and the 1st and 2nd interested parties regarding the action of the 1st interested party to step aside as the Deputy Inspector General and the appointment of the 2nd interested party to carry out functions of that office.



12. The petitioner relied on several decisions, including *Gikenyi B & 6 others v Moi Teaching and Referral Hospital & 24 others*; *Chumba & 46 others (Interested Parties)* [2024] KEHC 7510 (KLR) and *Moi Teaching and Referral Hospital & 3 others v Gikenyi B & 152 others* [2025] KECA 937 (KLR) to support his argument that there is no employer-employee relationship thus, this court has jurisdiction to hear the petition.
13. The petitioner again submitted that the preliminary objection is not a true preliminary objection as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 and urged the court to dismiss the preliminary objection.
14. The 2nd to 4th interested parties did not take part in the proceedings at this stage.
15. I have considered the arguments by parties on this preliminary objection. The respondents and the 1st interested party have objected to the jurisdiction of this court to hear this petition arguing that the issues raised in the petition fall within the jurisdiction of the ELRC and not this court.
16. The petitioner on his part, maintained that the issues raised in the petition fall within the jurisdiction of this court since there is no employer-employee relationship to make the matter fall within the jurisdiction of the ELRC. The petitioner took a firm position that the issues being on violation of *the Constitution* and the law, they fall for determination within the jurisdiction of this court.

Jurisdiction

17. Jurisdiction is the power or authority given to a court to hear and determine a dispute presented before it for resolution. Whether a court has jurisdiction to hear a matter or not, is a threshold question to be determined based on the facts of the matter before court. In that regard, when jurisdiction of the court is challenge, the court has to carefully consider and determine the fundamental question of its jurisdiction over the matter.
18. Where the court determines that it has no jurisdiction to hear a matter, that is the end of the matter. It should not take any further step, but down its tools. (See *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited* [1989] eKLR).
19. In *Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 others* [2012] eKLR, the Supreme Court stated:
 - (68) A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law... without jurisdiction, the Court cannot entertain any proceedings...Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.
20. In re the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011 [2011] eKLR, after referring to *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited* (supra), the Supreme Court observed:
 - (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*.



21. It follows therefore that jurisdiction of a court must flow from *the Constitution*, statute or both. The court should only exercise jurisdiction as conferred on it by *the Constitution* or the law. It must not act without jurisdiction.
22. Article 162(2)(a) required Parliament to establish Courts with equal status to the High Court to hear and determine disputes relating to Employment and Labour Relations and the environment and the and occupation of and title to land. Parliament enacted the ELRC Act establishing the ELRC under section 4 while section 12 of the ELRC Act provides for the jurisdiction of the Court.
23. Under section 12, the ELRC has exclusive, original and appellate jurisdiction to determine all disputes referred to it in accordance with Article 162 (2) of *the Constitution*, the provisions of the Act, and any other written law that extends jurisdiction to that court.
24. Section 12 of the ELRC Act is clear that jurisdiction of the ELRC is on disputes relating to, or arising out of, employment between an employer and an employee; an employer and a trade union; an employers' organisation and a trade union's organisation; between trade unions; between employer organisations; an employers' organisation and a trade union; a trade union and employer's organisation or a federation and a member thereof; concerning registration and election of trade union officials; and disputes relating to the registration and enforcement of collective agreements.
25. Article 162(2) (a) of *the Constitution* read with section 12 of the ELRC Act are clear that the core jurisdiction of the ELRC is to determine disputes that arise out of employer-employee relationship and related matters.
26. The jurisdiction of this Court, on the other hand, is donated by Article 165(3) of *the Constitution*. This court has unlimited original jurisdiction in criminal and civil matters. The court has also jurisdiction to, among others,
 - (b) determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (d) any question respecting the interpretation of *the Constitution*, including the determination of —
 - (i) the question whether any law is inconsistent with or in contravention of *the Constitution*;
 - (ii) the question whether anything said to be done under the authority of *the Constitution* or of any law is inconsistent with, or in contravention of, *the Constitution*.
27. Article 165(3) thus, authorises this court to decide all matters other than those reserved for other courts as contemplated in Article 162 (2) and restricted by Article 165(5) and (6). The sweep of the constitutional authorisation given to this court, including when determining a challenge to its jurisdiction, should be understood through the prism of Article 165(3).
28. The issue of jurisdiction between the ELRC and this Court has been the subject of litigation in the Superior Courts. In *Attorney General & another v Dr. Major (RTD) Shadrack Mutia Muiui & another* (Civil Appeal No. E146 of 2021) [2025] KECA 816 (KLR), the Court of Appeal was called upon to consider an appeal from the judgment of the ELRC where a petition had been filed challenging the decision to withhold the petitioner's salary and allowances as being unconstitutional. The petitioner had been appointed a Commissioner to the National Police Service Commission. The ELRC held that withholding the salary was unlawful and awarded the petitioner his withheld salary from the period it was stopped to the end of his term.



29. The Attorney General and the National Police Service Commission as the respondents were dissatisfied with that judgment and lodged an appeal before the Court of Appeal. Upon hearing the appeal, the Court of Appeal held, referring to its decision in *Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others* [2020] eKLR:
- (25) In its judgment in *Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others* (supra), this Court emphatically found that the appointment and removal from office of the commissioners or holders of independent offices is not a labour and employment issue as it does not involve any of the parties or raise any of the employment and labour issues contemplated by section 12 of the Act.
30. The Court of Appeal took the view, that the dispute had a constitutional connotation and could not be said to strictly fall under section 12 of the *Employment Act*, pointing out that the jurisdiction of the ELRC is limited rather than unlimited and that whereas the ELRC has jurisdiction in appropriate cases to interpret and apply *the Constitution* in matters that arise in the context of disputes on employment and labour relations, the ELRC has no original or unlimited jurisdiction to interpret and apply *the Constitution*.
31. In *County Assemblies Forum v Attorney General & 3 others; Parliamentary Service Commission (Interested party)* [2022] KESC 66(KLR), the Supreme Court stated:
- On the question of the appropriate forum of the dispute, the trial court found that the question of enforcement of rights and fundamental freedoms even touching on the employment and labour is within the competence of the High Court pursuant to article 22. We are inclined to agree with the trial court and add that articles 23 and 165 of *the Constitution* fortifies this position as they are the provisions that give the High Court jurisdiction to hear and determine applications for redress of denial, violation or infringement of rights and fundamental freedoms in the Bill of Rights.
32. To that pronouncement, one must also pay close attention to article 165(3)(d) which confers on this court jurisdiction to hear any question respecting interpretation of *the Constitution*, including the determination of -
- (ii) “the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution.”
33. In the present petition, the petitioner argued that the issues raised are on violation of *the Constitution* and the law. According to the petitioner, the issues that the court is required to answer include whether the 1st interested party could step aside and whether he could appoint someone to act in that position during his absence.
34. I have carefully read the petition and the issues raised. The issues raised do not include determination of employer–employee relationship or related matters. Rather the issues are purely on the interpretation of *the Constitution* and the law, namely; whether the 1st interested party’s actions were constitutional and legal. As a matter of fact, there is no employer-employee relationship issue in this petition, except the constitutionality and legality of the 1st interested party’s actions. That is; the petition challenges what the petitioner perceives to be constitutional violations thus, questions the constitutional validity of the 1st interested party’s actions.



35. As already stated earlier, under article 165(3)(d) of the Constitution, this court is given express jurisdiction to hear any question on the interpretation of the Constitution, including determination of questions

“whether anything said to be done under the authority of this constitution or of any law is inconsistent with, or in contravention of, this constitution.”

36. Respecting this petition, this court will have to determine whether anything that was said to have been done by the 1st interested party under the authority of the Constitution or the law is inconsistent with or in contravention of the Constitution and or the law which falls within the jurisdiction of this court. In other words, the petition seeks this court’s determination whether the 1st interested party’s actions were within the framework of the Constitution and the law thus, falling within the exclusive jurisdiction of this court. There are also questions on actions or omissions on the part of the 1st respondent which also call for interpretation of the Constitution and the law.

37. It is also important to point out that the position of Deputy Inspector General is a creature of the Constitution under article 245(3), which provides that:

The Kenya Police Service and Kenya Administration service shall each be headed by a Deputy Inspector General appointed by the president on the recommendation of the national Police service commission.

38. Section 9 of the National Police Service Act again reiterates the fact that the office of Deputy Inspector General is established under the Constitution, providing that the Deputy Inspector General in charge of Kenya Police Service and the Deputy Inspector General in charge of Administration Police Service, shall be appointed to office in accordance with Article 245 of the Constitution and section 13 of this Act.

39. The position of Deputy Inspector General and the manner of appointment having been created by the Constitution, has a constitutional connotation and the holder of that office is not an employee in terms of the Employment Act to make this petition fall within the jurisdiction of the ELRC.

40. In the circumstances, I am unable to agree with the respondents and the 1st interested party that this court has no jurisdiction to hear this petition. Rather, I affirm that this court has jurisdiction to hear the petition.

41. Consequently, and for the reasons stated herein above, the preliminary objection is over ruled and dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025

E C MWITA

JUDGE

