



Kiptoo v Principal Secretary Ministry of Interior and Co-ordination of National Government & 2 others; Public Service Commission (Interested Party) (Petition E003 of 2025) [2025] KEHC 14849 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
PETITION E003 OF 2025
JRA WANANDA, J
OCTOBER 3, 2025**

IN THE MATTER OF THE ALLEGED VIOLATION OF ARTICLES 2(1) AND (2), 3(1), 10(1) AND (2), 19, 20(1), 22, 23, 24, 27(1) AND (2), 41(1), 47, 232, 258 AND 259 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF APPOINTMENT OF AMOS KIPLAGAT KIPTARAT AS THE ASSISTANT CHIEF GRAND II OF KAPTERIT SUB-LOCATION, KAPECHEROP DIVISION, MARAKWET WEST SUB-COUNTY

AND

IN THE MATTER OF ADMINISTRATION ACTION NO. 47 OF 2015 AND IN THE MATTER OF THE EMPLOYMENT ACT, 2007 AND THE PUBLIC SERVICE COMMISSION ACT, 2017

BETWEEN

HENRY KOSGEI KIPTOO PETITIONER

AND

PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

COUNTY COMMISSIONER ELGEYO MARAKWET COUNTY 2ND RESPONDENT

ASSISTANT COUNTY COMMISSIONER ELGEYO THE ATTORNEY GENERAL 3RD RESPONDENT

AND



RULING

1. This Ruling is in respect to a Preliminary Objection on jurisdiction. Yet again, the confusion over the exact location of the boundary-line separating the mandate of the High Court from that of the Employment and Labour Relations Court [ELRC] comes into question.
2. The background of the matter is that the Petitioner vide the Petition dated 15/05/2025 filed through Messrs M.R. Ayora & Co. Advocates, sought the following orders:
 - a. A declaration that the recruitment and appointment process for the position of Assistant Chief Kapterit violated Articles 27, 41, 47, 73 and 232 of the Constitution;
 - b. An order of Certorari to quash the appointment of the 4th Respondent as Assistant Chief, Kapterit;
 - c. An order of prohibition restraining the 4th Respondent from assuming or discharging duties as Assistant Chief, Kapterit.
 - d. An order of Mandamus compelling the Respondents to conduct a fresh, transparent, and merit-based recruitment process for the said position.
 - e. Any other relief this Honourable Court may deem just and fit to grant in the interest of justice.
 - f. Costs of the Petition.
3. Together with the Petition, the Petitioner also filed the Notice of Motion dated 15/05/2025 in which he sought conservatory orders and various other interim reliefs pending determination of the Petition. One of the interim prayers was that the Respondents be ordered to give access and avail to the Petitioner copies of the Applicant's academic testimonials and all material/documents received from all the Applicants, and copies of minutes of the meeting of the Respondents approving and appointing the 4th Respondent to the said position.
4. In his Supporting Affidavit, the Petitioner deponed that he was one of the candidates who applied for the position of Assistant Chief, Kapterit sub-location following the public advertisement issued on 4/09/2024, and that he had the necessary qualifications, experience and community standing and he was shortlisted, interviewed and assessed during the recruitment process conducted on 9/10/2024. He deponed further that he believes he was the most qualified applicant and from reliable sources about his performance, he had legitimate expectation to be fairly considered and appointed, but to his shock and dismay, the position was given to the 4th Respondent whose selection lacked transparency, fairness and did not reflect procedural propriety. He contended further that the process failed to adhere to the Constitutional values, the right to fair and Administration Act, equal opportunity and non-discrimination and transparency, constitutional and merit-based appointment in public service. He added that the outcome of the process was tainted with favouritism, possible political interference, and disregard to community input, which has led to widespread dissatisfaction among local residents.
5. In response to the Petition, the Interested Party, Public Service Commission, through Ms. Wangechi Gichangi, its Assistant Director, Legal Services Respondent, and the Hon. Attorney General, appearing for the 1st, 2nd and 3rd Respondents, through Mr. Kwame Ramo, filed identical Notices of Preliminary Objection dated 3/06/2025, and 6/06/2025, respectively.



6. The objection is basically that the issue relating to appointment and/or employment of Chiefs and Assistant Chiefs in any part of the county is an employment related issue, and this being an employment and labour relations matter, the jurisdiction to hear and determine the same is reserved for the Employment and Labour Relations Court [ELRC] pursuant to Article 162[2][b] of *the Constitution*, as read with Section 12 of the *Employment and Labour Relations Court Act*. For this reason, it is urged that this Court lacks the requisite jurisdiction to hear and determine this matter.
7. Regarding the 4th Respondent, despite there being a Return of Service on record indicating that he was served, there is no response from him to the Petition, nor did he appear in Court, and nor did any Counsel appear on his behalf.
8. By the consent of the parties, it was agreed that the Preliminary Objection be heard and determined first. Pursuant thereto, the same was canvassed by way of written Submissions. The Petitioner filed the Submissions dated 12/06/2023, and the Interested Party filed the Submissions dated 3/06/2025. On the part of the 1st, 2nd and 3rd Respondents represented by the Hon. Attorney General, although Mr. Kwame told the Court that he had filed Submissions, I have not come across any either in the physical Court file or in the Judiciary Case Tracking System [CTS].

Interested Party's Submissions

9. Counsel for the Interested Party, after reciting the objection, cited the Supreme Court case of National Security Fund Board of Trustees v Kenya Tea Growers Association & 14 Others [Civil Appeal 656 of 2022 [2023] KECA 80 [KLR] [3 February 2023], and also the Court of Appeal case of Phoenix of E.A. Company Limited v S.M. Thiga t/a Newspaper Service [2019] eKLR. She reiterated that in light of the Constitutional and statutory provisions cited, and the findings made in the said authorities, the only available remedy is to strike out the Petition so that the Petitioner may have the opportunity to file a fresh suit before the proper judicial forum. She submitted further that this Court cannot even transfer the matter since it has no jurisdiction to entertain anything in respect to it.

Petitioner's Submissions

10. On his part, Counsel for the Petitioner cited the case of Lydia Nyambura Mbugua v Diamond Trust Bank Ltd and Another [2018] eKLR, and submitted that the Petitioner is complaining of violation of his Constitutional rights and this Court is empowered under Article 165 thereof to hear and determine the Petition.
11. According to Counsel, the predominant issue was the process undertaken by the Respondents which disenfranchised employment of the Petitioner, which is not an employment issue, and which brings into play the *Fair Administrative Action Act*. He submitted that this is one of those matters where both the High Court and the ELRC have concurrent jurisdiction in disputes related to the process leading to employment. He urged that dismissal of the Petition, if the Court agrees with the Interested Party, will greatly prejudice the Petitioner and the Court should, instead, transfer the same to the appropriate Court to allow the Petitioner to be heard and determined on merit. He cited the case of Katweka v National Police Service & Another [2023] KEHC [268] [KLR].

Determination

12. The issue for determination herein is “whether the jurisdiction to determine the dispute herein properly lies with this High Court, or the Employment and Labour Relations Court [ELRC]”.
13. Before I interrogate the merits of the Preliminary Objection, I need to first address the question whether the challenge raised meets the threshold for what should constitute a “Preliminary Objection”.



In that respect, the Supreme Court, in the case of *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others*, while following the oft-cited decision of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, restated the following:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

14. The issue raised by the Respondents being one that touches on this Court’s jurisdiction, there is no doubt that it, indeed, fits well within the circumstances contemplated as constituting a “Preliminary Objection”.

15. The Supreme Court, further in the case of *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR, guided that:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

16. Regarding merits of the Preliminary Objection, the Respondents contends that this Court is divested of jurisdiction in view of Article 162[2][b] of *the Constitution* of Kenya 2010 and Section 12 of the Employment and Labour Relations Land Court Act.

17. Indeed, in the celebrated case of *The Owners of the Motor Vessel “Lillian’s” v Caltex Oil Kenya Ltd* [1989] KLR 1, Nyarangi J.A. held as follows:

“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. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.”

18. Similarly, in the case of *Samuel Kamau Macharia and Another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No. 2 of 2011, the Supreme Court held that:

“[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 itself jurisdiction exceeding that which is conferred upon it by law.”

19. In respect to the issue of separation of jurisdiction, pursuant to Article 162[3], Parliament enacted the *Employment and Labour Relations Court Act*, No. 20 of 2011, Section 12[1] which outlines the jurisdiction of the ELRC.



20. In regard to the High Court, *the Constitution* under Article 165[3][a] provides as follows:

[3] Subject to clause [5], the High Court shall have—

[a] Unlimited original jurisdiction in criminal and civil matters;

21. Article 165[5] then provides that:

“The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162[2].”

22. In the discharge of the obligation placed on it by *the Constitution*, Parliament, as aforesaid, enacted the *Employment and Labour Relations Court Act*, and set out in detail, the jurisdiction of that Court. Section 12 of that Act then outlines the jurisdiction of the ELRC as follows:

12. Jurisdiction of the Court

[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 to the Court relating to employment and labour relations including —

- [a] disputes relating to or arising out of employment between an employer and an employee;
- [b] disputes between an employer and a trade union;
- [c] disputes between an employers' organisation and a trade unions organisation;
- [d] disputes between trade unions;
- [e] disputes between employer organizations;

“ [f] disputes between an employers' organisation and a trade union;

“ [g] disputes between a trade union and a member thereof;

“ [h] disputes between an employer's organisation or a federation and a member thereof;

[i] disputes concerning the registration and election of trade union officials; and

[j] disputes relating to the registration and enforcement of collective agreements.

[2] An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose.

.....

23. The Supreme Court, while dealing with the issue of separation of jurisdiction between the High Court and the ELRC, in the case of Kenya Tea Growers Association & 2 others v The National Social Security



- “72. This appeal turns on the ELRC’s jurisdiction as a court of the status of the High Court to determine the constitutional validity of an Act of Parliament
73. For us to dispose of this issue in the face of the two contrasting positions of the parties, it is important to briefly revisit the constitutional reform process that preceded the establishment of the ELRC. In the Karisa Chengo case, the court recounted the history and context in which the Committee of Experts [CoE] conceived of specialised courts. Specifically, that the drafters of *the Constitution* intended to delineate the roles of specialised courts, for the purpose of achieving specialization while conferring equality of the status of the High Court to the new category of courts.
77. The question before us is whether, within the scheme of the jurisdictional virements effected by *the Constitution* between the High Court and the two specialized courts, the latter can determine the constitutional validity of a statute.
78. Once again, we are guided by this court’s finding in the Karisa Chengo Case wherein the court held as follows:
- “ [52] In addition to the above, we note that pursuant to article 162[3] of *the Constitution*, Parliament enacted the *Environment and Land Court Act* and the *Employment and Labour Relations Act* and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of *the Constitution* and these Acts of Parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. The three are different and autonomous courts and exercise different and distinct jurisdictions. As article 165[5] precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.” [Emphasis added]
79. In our view, there is nothing in *the Constitution*, the ELRC Act, or indeed in our decision in the Karisa Chengo Case to suggest that in exercising its jurisdiction over disputes emanating from employment and labour relations, the ELRC court is precluded from determining the constitutional validity of a statute. This is especially so if the statute in question lies at the centre of the dispute. What it cannot do, is to sit as if it were the High Court under article 165 of *the Constitution*, and declare a statute unconstitutional in circumstances where the dispute in question has nothing or little to do



with employment and labour relations within the context of the ELRC Act. But, if at the commencement or during the determination of a dispute falling within its jurisdiction, as reserved to it by article 162[2][a] of *the Constitution*, a question arises regarding the constitutional validity of a statute or a provision thereof, there can be no reason to prevent the ELRC from disposing of that particular issue. Otherwise, how else would it comprehensively and with finality determine such a dispute? Stripping the court of such authority would leave it jurisdictionally hum-strung; a consequence that could hardly have been envisaged by the framers of *the Constitution*, even as they precluded the High Court from exercising jurisdiction over matters employment and labour pursuant to article 165[5][b]. We are therefore in agreement with the appellants’ submissions regarding this issue as encapsulated in paragraph 69 of this Judgment.

80. Having said so, we have to emphasize that the High Court retains the residual jurisdiction to determine whether any law is inconsistent with *the Constitution* within the meaning of article 165, bearing in mind the provisions of article 165[5][b]. It must also be restated that the High Court [as between it and courts established under article 162 of *the Constitution*], has the original and exclusive jurisdiction [without exception] to hear and determine applications for redress of denial, violation, or infringement of rights and fundamental freedoms in the Bill of Rights pursuant to articles 22 and 23 of *the Constitution* [See Supreme Court Judgment in the County Assemblies Forum v Attorney General & others; Pet No 22 of 2017, at Paragraph 56].

81. We now come to the specific question whether the ELRC correctly assumed jurisdiction to determine the constitutional validity of the NSSF Act 2013. Towards this end, we are persuaded by the appellants’ argument to the effect that the Court of Appeal adopted a rather restrictive view of the reach of the NSSF Act 2013, in holding that the matter before the ELRC did not emanate from an “employer-employee” dispute. The extensive provisions of the Act, requiring employers and employees to contribute specific amounts of money to a Social Security Fund cannot be said to have nothing to do with an employer-employee relationship. Even if the matter did not emanate from an employer-employee dispute within the confines of the ELRC Act, to the extent that it introduces enhanced and mandatory contributory amounts of employee earnings, the Act has potential to ignite justiciable grievances from certain cadres of employees. No doubt these grievances would end up at the ELRC which would likely be called upon, as it was in this case, to determine the constitutional validity of the same.”

24. The Supreme Court therefore made it clear that while the ELRC is not precluded from determining the constitutional validity of a statute, especially where such statute in question lies at the centre of the dispute before it, it cannot sit as if it were the High Court under Article 165 of *the Constitution*, and declare a statute unconstitutional in circumstances where the dispute in question has nothing or little to do with employment and labour relations within the context of the ELRC Act

25. Before the Supreme Court Kenya Tea Growers Association [supra], the Court of Appeal in its earlier decision in the case of Clerk, Nakuru County Assembly & 3 others v Odongo & 7 others [Civil Appeal



E136 & E137 of 2022 [Consolidated]] [2023] KECA 427 [KLR] [14 April 2023] [Judgment], had also dealt with the issue of separation of jurisdiction between the High Court and the ELRC. In the case leading to the Appeal, Hon. Nderitu J, had held that the ELRC had the requisite jurisdiction to hear and determine a Constitutional Petition alleging violation or infringement of Constitutional rights during the process of the advertisement, shortlisting, recruitment, nomination, and vetting of Chief Officers of the Nakuru County Government. In overturning that decision, the Court of Appeal found as follows:

“29. It is evident that from the provisions of both Article 162 [2] [a] and Section 12 of the E&LRC Act, the jurisdiction of the E&LRC is limited to matters relating to employment and labour relations.

30. We have carefully perused the impugned petition and note that the 1st respondent was challenging the process leading to the nomination of the interested parties therein as chief officers of the 3rd respondent. The said officers had not been appointed as the process was halted before they could be vetted. The appointment was to be done after one is successful in the vetting. Additionally, the 1st respondent was neither an employee of the appellants nor had he been shortlisted by the appellants for vetting and possible subsequent approval for appointment.

31. There was therefore no existence of an employer/employee relationship between the appellants and the 1st respondent or indeed any other matter akin to the employment nor any labour issue as contemplated by the provisions of Section 12 [1] [a-j] of the E&LRC Act.

.....
33., none of the Interested Parties had a contract, be it written or oral and as the process towards creating the relationship of an employer/employee were halted, S. 12 of the E&LRC Act was inapplicable.

.....
35. Having found that there was no employee/employer relationship between the appellants and the 1st respondent, nor an employment and labour relations dispute as contemplated by Article 162 [2] of *the Constitution* or Section 12 [1] of the E&LRC Act, it is our view that the court fell into error when it proceeded to assume and arrogate unto itself, a jurisdiction that it did not have.

36. In the case of Attorney General & 2 others v Okiya Omtata Okoiti & 14 others [2020] eKLR this Court stated as regards the jurisdiction of the specialized court created pursuant to the provisions of Article 162 [2] of *the Constitution* and more specially the E&LRC:

“We have no doubt in our minds that the E&LRC did not have any jurisdiction to entertain the three petitions that led to this appeal. A burning and well-founded desire to remedy what are perceived to be violations of *the Constitution* does not justify seeking redress from a forum in which *the Constitution* has not vested the power to issue a remedy. It is a sad case of assuming that a wrong can be made right by another wrong. There is no fidelity to *the Constitution* in



seeking to enforce *the constitution* through unconstitutional means. The issues raised in the petitions were weighty but were misdirected to the wrong forum. *The Constitution* has granted the High Court the requisite jurisdiction to hear and determine those issues and that is where they ought to have been raised. Having come to that conclusion, we have no basis for venturing into the merits of the appeal.”

37. The 1st respondent having filed a petition in a Court that did not possess jurisdiction could not make that wrong right by a court arrogating itself a jurisdiction it did not have.
38. More recently in *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others* [Civil Appeal 656 of 2022] [2023] KECA 80 [KLR] [3 February 2023] this Court stated:

“We have read all the pleadings in the consolidated petitions. As the E&LRC bench correctly noted, the petitions challenged the constitutional validity of the legislative process leading to enactment of a legislation and or some of its provisions. This was not an employer-employee dispute. The E&LRC bench failed to appreciate that laws affect many things in a variety of ways, large and small, but these side winds do not determine what matter a law is in relation to. That is determined by analyzing the central focus of the law, what it is really all about. In order to analyze what matter a challenged law is “in relation to” the court must separate it from matters incidentally affected by the law. The bench failed to appreciate this crucial separation.”

39. In our view, the E&LRC ought to have analyzed the crux of the petition before it. Further and with utmost respect to the learned judge, it is our view that he could not rely on the preamble to the E&LRC Act which provides that the court will hear and determine disputes relating to employment and labour relations and “for connected purposes”. He also erred by interpreting the word “including” in Section 12 of the E&LRC Act to arrogate himself a jurisdiction that he did not have and handle all and sundry matters before him as the preamble and S. 12 thereof cannot be read in isolation to the other substantive sections of the E&LRC Act. We note that as a matter of fact almost every other statute in our laws uses the words “and for connected purposes.” Faced with a similar scenario in the NSSF Case [supra], this Court stated as follows:

“..... For the matters cited by Mr Obura to qualify by implication that they fall within the ambit contemplated by the use of the word “includes,” they must be part of the issue under consideration in the dispute. The issue under consideration in the petitions was the constitutional validity of a statute and or some specific provisions of the act. The constitutional validity of the statute or the targeted provisions did not arise from an employer-employee dispute. The intention of Parliament is clear both from the preamble and section 12 [1] [a]-[f]. The E&LRC act was enacted to resolve employer/



employee disputes as provided by article 162 [a] of *the Constitution*. That is the purpose and context which cannot be ignored in interpreting provisions of the act. Decided cases are in agreement that constitutional issues can be determined by the E&LRC only if they arise from an employer-employee dispute. The germane issue framed by the court did not arise in an employer- employee dispute nor does it fall under section 12 [1] [a]-[f].”

40. Having found that the E&LRC did not have jurisdiction to handle the petition that was before it, the court ought to have immediately downed its tools and struck out the petition since a decision made by a court without jurisdiction is a nullity in law.

41. Consequently, we find merit in this ground of appeal and hold and find that the E&LRC did not have the jurisdiction to handle the petition before it in light of the provisions of Article 162 [2] of *the Constitution* and Section 12 of the E&LRC Act.....
.....”

26. According to the Court of Appeal therefore, the jurisdiction of the ELRC can only be invoked after the stage of an employer/employee relationship has been reached, or in a situation akin to the employment, or in a labour issue. The jurisdiction does not therefore arise during the preliminary stage prior to appointment or employment, such as the process of advertisement, shortlisting, interviewing, or nomination of candidates to be considered for appointment or employment.

27. The Appellants, dissatisfied with the decision, filed an Application seeking certification of the matter as one that was fit to be appealed against at the Supreme Court. This was in *Odongo v Clerk, Nakuru County Assembly & 5 others* [Civil Appeal [Application] E001 of 2023] [2023] KECA 1554 [KLR] [15 December 2023] [Ruling]. In dismissing the Application for Certification, the Court of Appeal held and reiterated that:

“27. This court held that the ELRC did not have jurisdiction to deal with the matter, as no contract of employment had been entered into between the County Government and the nominees, and the dispute was not an employment and labour dispute in nature; there was no employer-employee relationship between the applicant and any of the respondents, and therefore the applicant lacked the locus to institute the proceedings; From the findings of the impugned judgment, we are satisfied that the applicant has not set out in any form why these elements of settled law require consideration by the Supreme Court and how they impact on third parties or other cases.

28. It is common ground that this is the first decision by this court touching on the jurisdiction of the ELRC about selection, recruitment, and appointments. The applicant did not cite any of the contradictory decisions referred to in his grounds and affidavit in support of the application. It is not enough for the applicant to merely state that there are contradictory decisions. We have also not found any express pronouncements by the judgments of the High Court and the ELRC addressing this issue.”



28. Undeterred, the Appellants, moved to the Supreme Court and sought a Review of the Court of Appeal’s refusal to grant leave to appeal. This Review was sought in *Odongo v Clerk, Nakuru County Assembly & 5 others* [Application E053 of 2023] [2024] KESC 29 [KLR] [Civ] [28 June 2024] [Ruling]. In dismissing the Application, the Supreme Court ruled that:

- “8.
- i.
 - ii. The decisions cited by the applicant and relied upon during the appeal, as a basis to seek certification, now repeated in this application, were decisions emanating from the High Court. The Court of Appeal subsequently, and in light of the High Court decisions, rendered its decisions in *Attorney General & 2 others v Okiya Omtata Okoiti & 14 others* [2020] eKLR and *National Social Security Fund Board of Trustees v Kenya Tea Growers Association and 14 others* [Civil Appeal 656 of 2022] [2023] KECA 80 [KLR] which determined the jurisdiction of the ELRC and the capacity of the parties who might approach it. The applicant has not advanced any cases that are distinguishable from these decisions of the Court of Appeal.
 - iii. The Supreme Court has equally rendered decisions in respect to the provisions of article 162 and section 12 of the ELRC Act. In *Republic v Karisa Chengo & 2 others* SC Petition No 5 of 2015 [2017] eKLR for example, we determined that the ELRC and High Court are different and autonomous courts and exercise different jurisdictions; the jurisdiction of the ELRC being limited to matters provided for in the statute regulating the same; and in *Albert Chaurembo Mumba & 7 others*] SC Petition No 3 of 2016 [2019] eKLR, the court held that nowhere in the ELRC Act is there jurisdiction conferred on the ELRC to resolve issues between trustees of a pension scheme and members of the scheme [pensioners] nor does a pensioner fall within the listed category of persons and parties that can make an application or institute proceedings before the ELRC.
 - iv. Similarly, in *Kenya Tea Growers Association & 2 others versus National social security Fund Board of Trustees & 13 others* SC Petition No. E004 of 2023 as Consolidated with Petition No. E002 Of 2023, a case that challenged the validity of the NSSF Act, the court held that the dispute roped in disputants contemplated under section 12[2] of the ELRC Act; and that the ELRC has jurisdiction to determine the constitutional validity of a statute in matters relating to employment and labour. suffice to say, the statute in question must be in focus and at the centre of the dispute in question.
 - v. The above cases demonstrate that this Court has demarcated the jurisdiction of the Employment and Labour Relations Court



in line with the provisions of article 162 of *the Constitution* as read with section 12 of the ELRC Act. The common theme in all the cases is that a dispute falling within the purview of the ELRC should emanate from an employee-employer relationship and/or affect its status. This is different from the High Court, which has unlimited jurisdiction in civil and criminal matters while the specialized courts under Article 162 are limited in terms of their jurisdiction and the persons who might approach it. The Court of Appeal decision therefore correctly interpreted the provisions of section 12 of the ELRC Act and arrived at a proper interpretation of that section in the circumstances of the present case.”

29. With the above declarations and the refusal to certify the matter as one fit to be appealed against at the Supreme Court, any chance to overturn the decision of the Court of Appeal in the case of Clerk, Nakuru County Assembly & 3 others v Odongo & 7 others [Civil Appeal E136 & E137 of 2022 [Consolidated]] [2023] KECA 427 [KLR] [14 April 2023] [Judgment], was finally and conclusively extinguished. Considering our legal system that observes the principle of stare decisis, and the hierarchy of Courts, I am bound by that decision and must follow it.
30. In view of the foregoing, the contention that this Petition should have been filed at the ELRC cannot succeed. As ruled by both the Court of Appeal and the Supreme Court, the case is properly before this High Court.

Final Orders

31. In premises, the Interested Party and the 1st, 2nd and 3rd Respondents’ Preliminary Objections dated 3/06/2025, and 6/06/2025, respectively are both dismissed. Costs shall be in the course.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 3RD DAY OF OCTOBER 2025

WANANDA JOHN. R. ANURO

JUDGE

Delivered in the presence of:

Mr. Onderi h/b for Ayora for the Petitioner

Mr. Kwame for the 1st, 2nd and 3rd Respondents

N/A for the 4th Respondent

Mr. Kaane h/b for Ms. Wangechi for the Interested Party

Court Assistant: Brian Kimathi

