



Robson Harris Advocates LLP v Social Health Authority & another (Judicial Review Application E025 of 2026) [2026] KEHC 1794 (KLR) (Judicial Review) (18 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1794 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E025 OF 2026
RE ABURILI, J
FEBRUARY 18, 2026**

BETWEEN

ROBSON HARRIS ADVOCATES LLP APPLICANT

AND

SOCIAL HEALTH AUTHORITY 1ST RESPONDENT

**THE CHIEF EXECUTIVE OFFICER SOCIAL HEALTH
AUTHORITY 2ND RESPONDENT**

RULING

1. The chamber summons dated 3/2/2026 was filed on the even date. The applicant is a firm of Advocates, Robson Harris Advocates LLP. The Respondents are Social Health Authority (SHA) and the Chief Executive Officer, Social Health Authority.
2. The applicant seeks leave of this court to apply for Judicial Review orders of mandamus to compel the 2nd Respondent Chief Executive Officer of the 1st Respondent, to implement the order of the court issued on 14/10/2025 by Hon. Lady Justice Stella Chemtai Rutto in Employment and Labour Relations Court (ELRC) Misc Application No. E132 of 2025 between Robson Harris Advocates LLP vs Social Health Authority, by paying to the Applicant the sum of Kshs.20,643,400 together with interest at court rates from the date of filing of the application, until payment in full, as ordered by the court.
3. The order by Stella Rutto J upheld the Service Level Agreement (SLA) between the applicant and SHA, the 1st Respondent herein entered into between the parties on 20/4/2022, on an employer/employee basis for provision of legal services wherein the parties agreed that fees charged would be paid in the installments mode set out in the matter being ELRC Petition No. E066 of 2022



between Federation of Kenya Employers (FKE) vs NHIF Management Board and 4 Others and David Manyonge Saratuki & Another as Interested Parties.

4. The present application was filed under certificate of urgency and placed before Justice Chigiti, SC on 3/2/2026 as the duty Judge. The learned Judge did not certify the application as urgent and I find no urgency either hence the same is not certified as urgent although being handled expeditiously for the reasons that I will provide in this Ruling. The learned Judge recused himself from handling the matter on account of conflict of interest and he directed the applicant to appear before me today.
5. Mr. Chebon Counsel for the applicant appeared *ex parte* this morning on the Court's invitation and argued the application, seeking the orders stated above.
6. I have considered the application as filed and submissions by Mr. Chebon Counsel for the applicant. I have perused the statutory statement and verifying affidavit sworn by Mr. Kelvin Mbogo Advocate and Partner in the applicant law firm on 3/2/2026, together with the annexures thereto which include the Ruling delivered on 19/9/2025 by Stella Rutto J of ELRC in ELRC Misc Application No. E132/2025.
7. The issue for determination is whether the leave sought is available to the applicant and therefore whether this court should grant the orders sought without delving into the merits of the intended motion.
8. I must however, first, establish whether this court, on the pleaded facts, has jurisdiction to hear and determine these proceedings. Jurisdiction is conferred by the statute and *the constitution*. Parties cannot confer or vest the court with jurisdiction and neither can a court of law arrogate itself of jurisdiction that it does not have or possess.
9. In *Macharia & another v Kenya Commercial Bank Ltd & 2 others* (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling), the Supreme Court aptly discussed the source of jurisdiction of Courts and held as follows:

“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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. 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. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

10. . Jurisdiction is so important to court of law or tribunal that a court or tribunal exercising jurisdiction that it is devoid of, acts in vain. This is what the Court of Appeal stated in the *locus classicus* *Owners*



of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment). The Court stated as follows, quite authoritatively, and concluded that without jurisdiction, the court has to down its tools and say no more.

“ 30. With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. 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 a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“ jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

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31. It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.

11. In the present case, the proceedings subject of the application took place before Employment and Labour Relations Court, a court of equal status but distinct from the High Court as was stated by the Supreme Court in the Karisa Chengo Case where the Supreme Court held as follows on jurisdiction of the High Court and the Courts of equal status with the High Court:

“...
50. It is against the above background, that article 162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of *the Constitution* intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts. Concurring with



this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of “ equal rank and none has the jurisdiction to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other” . Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these courts is subject to supervision or direction from another. In their words:

“By being of equal status, the High Court therefore does not have the jurisdiction to superintend, supervise, direct, guide, shepherd and/or review the mistakes, real or perceived, of the ELRC and ELC administratively or judiciously as was the case in the past. The converse equally applies. At the end of the day however, ELRC and ELC are not the High Court and vice versa . However, it needs to be emphasized that status is not the same thing as jurisdiction. *The Constitution* though does not define the word ‘status’. The intentions of the framers of *the Constitution* in that regard are obvious given the choice of... words they used; that the three Courts (High Court, ELRC and ELC) are of the same juridical hierarchy and therefore are of equal footing and standing. To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialised jurisdiction but they are not the High Court.”

51. Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the court’s operation. Courts can therefore be of the same status, but exercise different jurisdictions. That is why this Court has reaffirmed its position that the jurisdiction of Courts is derived from *the Constitution*, or legislation (see In Re the Matter of the Interim Independent Electoral Commission, at paras. 29 and 30; and Samuel Kamau Macharia and Another v. Kenya Commercial Bank and Two Others, Sup.Ct. Civil Application No. 2 of 2011 [para. 68]). In this instance, the jurisdiction of the specialized Courts is prescribed by Parliament, through the said enactment of legislation relating, respectively, to the ELC and the ELRC. Such legislation is to be interpreted in line with relevant constitutional provisions hence our position in *Gatirau Peter Munya v. Dickson Mwenda Kithinji and Two Others*, Sup. Ct. Civil Application No. 5 of 2014; [2014] eKLR, where we examined the constitutional provisions alongside legislative provisions on elections, and held [para. 77] that “ the *Elections Act*, and the Regulations thereunder, are normative derivatives of the principles embodied in Articles 81 and 86 of *the Constitution*, and that in interpreting them, a court of law cannot disengage from *the Constitution*.” In the instant case too, we take guidance from *the Constitution*, as we interpret it alongside the relevant statute law, pertaining to the specialized courts.
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 *suis generis* jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical



stature does not imply that either ELC or ELRC is the High Court or vice versa. 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.”

12. Applying the principles espoused in the above cases which are binding on this Court by the doctrine of precedence, the legal services in this case were rendered by the applicant advocate in the Employment and Labour Relations Court and the Service Level Agreement was given effect by the Employment and Labour Relations Court Judge in the ELRC Misc Application No. E132/2025.
13. Mandamus order which is intended to be sought to enforce the order of 19/9/2025 issued by Stella Rutto J of Employment and Labour Relations Court is in effect, enforcement of the said order, for reasons that the order was issued against SHA, a public body established by statute, SHA Act.
14. Section 49(5) of the SHA Act, 2023 protects the Authority’s Assets of the Fund from being liable to attachment under any process of law. It follows those proceedings to recover any debt or for settlement of any decree issued against the Respondent, can only be in accordance with Section 21 of the [Government Proceedings Act](#).
15. The applicant advocates are expected to comply with the requirements under that Section 21 of the [Government proceedings Act](#), obtain decree and certificate of order Against the Government, serve the accounting Officer, observing the timelines provided for in the Section, demand for settlement before seeking Judicial Review orders of mandamus.
16. I must mention that I have not seen any of the processes under the said Section being adhered to by the applicant prior to this application being filed.
17. It follows that even if this court was to find that it has jurisdiction to hear and determine these proceedings, the proceedings would be found to be premature and non-compliant with Section 21 of the [Government Proceedings Act](#) hence not arguable.
18. That said, and back onto the main jurisdictional issue. The jurisdiction of the High Court is derived, primarily, from Article 165 of [the Constitution](#). The same Article 165(5) of [the Constitution](#), nonetheless, expressly bars the High Court from hearing and determining disputes which are exclusively reserved for the Supreme Court of Kenya the specialized courts contemplated under Article 162(2) of [the Constitution](#) and these are the Employment and Labour Relations Court and the Environment and Land Court.
19. Since the main dispute was an Employment and Labour Relations matter and the orders which the applicant seeks to enforce through judicial review proceedings in this court were issued by the Employment and Labour Relations Court, the question is, can this court enforce orders or decrees issued by the Employment and Labour Relations Court in exercise of jurisdiction conferred on the latter Court by Article 162(2) (a) of [the Constitution](#) and the [Employment and Labour Relations Court Act](#), among other statutes?
20. The answer is found in Section 13 of the [Employment and Labour Relations Court Act](#), which provides for Enforcement of the orders of that court as follows:
 - “ 13. A judgment award, order or decree of the court shall be enforceable in accordance with the rules made under this Act”.



21. Vide legal Notice No. 146/2016, Parliament promulgated the Employment and Labour Relations Court (Procedure) Rules. Under Rule 7, Judicial Review proceedings are instituted in that Court pursuant to Sections 8 & 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.
22. Decisions of the court and orders that the court can grant are provided for under Section 12 of the Employment and LABOUR Relations Court Act and Rule 28 of the above cited 2016 Rules made under the Act.
23. Rule 32 of the Employment and Labour Relations Court (Procedure) Rules is on executions and warrants stipulates that Rules on execution of an order or decree shall be enforceable in accordance with the Civil Procedure Rules.
24. From the above analysis, it is apparent that this court is not the executing court or arm of the Employment and Labour Relations Court's orders. This is exactly what the Supreme Court in the KARISA Chengo case (SUPRA) stated, that none of the three Courts can supervise the other or enforce decrees of the other court.
25. We can clearly see that the ELRC has inbuilt statutory mechanisms for enforcement of its orders and decrees and therefore this court cannot enter into that jurisdiction to purport to enforce the orders of the ELRC.
26. For the above reasons, therefore I find and hold that the applicant's case is not arguable before this court and for want of jurisdiction, I decline to entertain the application dated 3/2/2026 and I proceed to strike it out with no orders as to costs.
27. This file is hereby closed.
28. I so order.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2026

R.E. ABURILI
JUDGE

