

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CONSTITUTIONAL PETITION NO. E006 OF 2025

LEONARD KIPKURUI SANG.....

PETITIONER

VERSUS

SOTIK TEA COMPANY LTD.

RESPONDENT

AND

CHEPKORIR WINFRIDA 1ST INTERESTED

PARTY

ONCHWANGI M. OGAKE 2ND INTERESTED

PARTY

KIPLANGAT W. YEGON 3RD INTERESTED

PARTY

TEYA E. GUTO 4TH INTERESTED

PARTY

**OUMA M. MIGOWE 5TH INTERESTED
PARTY**

**RATANDI C. NYAUNDI 6TH INTERESTED
PARTY**

**CHEBELILENY P. CHEPKIENG 7TH INTERESTED
PARTY**

**OKUTA P. OMONDI 8TH INTERESTED
PARTY**

**NYANGWONO S. MATONGO 9TH INTERESTED
PARTY**

**OMOKI F. ONYANGO 10TH INTERESTED
PARTY**

**OMWENGA N. MBORI 11TH INTERESTED
PARTY**

**MOGOI Z. NYASIANDOH 12TH INTERESTED
PARTY**

**KEMBERO F. OMWERI 13TH INTERESTED
PARTY**

**MOSIGIS NEVISON 14TH INTERESTED
PARTY**

OINO J. MAUTI 15TH INTERESTED PARTY

**MORARA E. MANYISA 16TH INTERESTED
PARTY**

**MORIOKA J. ONGESA 17TH INTERESTED
PARTY**

**NYAKUNDI E. ONDIEKI 18TH INTERESTED
PARTY**

SIMIYU GEOFFERY M. 19TH INTERESTED PARTY

ROTICH AUGUTINE 20TH INTERESTED PARTY

KIPKORIR W. MUTAI 21ST INTERESTED PARTY

ONCHOKE S. OTISO 22ND INTERESTED PARTY

MOGAKA S. KIBENI 23RD INTERESTED PARTY

OKERO W. MOREKA 24TH INTERESTED PARTY

**WANGILA G. MANDILA 25TH INTERESTED
PARTY**

OMWENGA J. OBWOGE 26TH INTERESTED PARTY

NYASIMI D. NYANGAU 27TH INTERESTED PARTY

ARASA T. GABRIEL 28TH INTERESTED PARTY

ALEX K. CHERUIYOT 29TH INTERESTED PARTY

MUTAI J. CHERUYOT 30TH INTERESTED PARTY

KIPROP S. KIRWA 31ST INTERESTED PARTY

NYANUMBA S. NYAMWEYA 32ND INTERESTED PARTY

ONKEO F. GAVANAH 33RD INTERESTED PARTY

MASIRA J. NYACHIO 34TH INTERESTED PARTY

LANGAT A. CHERUIYOT 35TH INTERESTED PARTY

OKECHI SHEM 36TH INTERESTED PARTY

NYACHWAYA E. ONGAKI 37TH INTERESTED

PARTY

RONOH KIPLANGAT 38TH INTERESTED

PARTY

SIMBA T. ANGWENYI 39TH INTERESTED

PARTY

CHEPKIRUT LILIAN 40TH INTERESTED

PARTY

KEBAKI E. NYAMASEGE 41ST INTERESTED

PARTY

ROP D. KIPKOECH 42ND INTERESTED

PARTY

OMWANWA E. OIGO 43RD INTERESTED

PARTY

OTIENO D. OGIRA 44TH INTERESTED

PARTY

BOSIRE R. OBURU 45TH INTERESTED

PARTY

**BARETIET H. KIPTOO 46TH INTERESTED
PARTY**

**OGWORA PATRICK 47TH INTERESTED
PARTY**

**WILSON NYASWABU 48TH INTERESTED
PARTY**

**ONCHONGA H. RONALD 49TH INTERESTED
PARTY**

**KEMUNTO F. OMURWA 50TH INTERESTED
PARTY**

CHEPKORIR ROSE 51ST INTERESTED PARTY

**OMUKU J. OROKO 52ND INTERESTED
PARTY**

**JAIRUS ONGERI 53RD INTERESTED
PARTY**

KIRET C. KERICH 54TH INTERESTED PARTY

KIRUI J. KIPROTICH 55TH INTERESTED PARTY

KIBET S. NGENO 56TH INTERESTED

PARTY

BETT CHARLES 57TH INTERESTED

PARTY

MARITIM P. KIPKURUI 58TH INTERESTED

PARTY

JEPNGETICH EMILY 59TH INTERESTED PARTY

GICHANA K. NYAKUNDI 60TH INTERESTED

PARTY

OGONYO R. OSEKO 61ST INTERESTED

PARTY

OMAYO J. OCHIENG 62ND INTERESTED

PARTY

MATAGARO Z. NYAKUNDI 63RD INTERESTED

PARTY

OMWENGA R. MOCHAMA 64TH INTERESTED

PARTY

**MOKAMBA A. MESA 65TH INTERESTED
PARTY**

ICHWARA J. OSORO 66TH INTERESTED PARTY

**ABUGA DOMINIC 67TH INTERESTED
PARTY**

**KIMUTAI C. LANGAT 68TH INTERESTED
PARTY**

**KOMRO E. KESOGO 69TH INTERESTED
PARTY**

**SAWE ERIC 70TH INTERESTED
PARTY**

**NDUBI R. KWAMBOKA 71ST INTERESTED
PARTY**

**RONO R. KIPROTICH 72ND INTERESTED
PARTY**

SAWE ERIC 73RD INTERESTED PARTY

KIPKEMOI I. BETT 74TH INTERESTED PARTY

MBURU P. CHEGE 75TH INTERESTED PARTY

KIRUI PATRICK 76TH INTERESTED PARTY

SAGWE J. NYABURI 77TH INTERESTED PARTY

R U L I N G

1. In this Petition, the Interested Parties stated that they were the Respondent’s employees. The Interested Parties further stated that the Respondent unilaterally and unconstitutionally implemented a lay off policy that had affected and impacted their livelihoods and had been unable to seek any redress owing to harassment and victimization by the Respondent at the work place.

2. The Interested Parties’ prayers included among others a declaration that the Respondent’s action of implementing a

lay off programme was unfair and unlawful labour practice and violated their constitutional right to fair labour practice guaranteed under **Article 41(1) of the Constitution of Kenya.**

Notice of Motion dated 10th June 2025

3. The Respondent filed a Notice of Motion dated 10th June 2025 seeking the following orders: -

I. That the Petition dated 24th March 2025 be struck out for want of jurisdiction.

II. That the name of the Petitioner be struck out for lack of *locus standi*.

4. Through a supporting affidavit sworn by Yvonne Achitsa on 10th June 2025, the Respondent stated that this court lacked jurisdiction to determine the matter and ought to strike out

the Petition. That the Interested Parties' claims related to alleged unlawful deductions of salaries and alleged breach of their employment contract arising out of the employee lay off policy. The Respondent further stated that by virtue of **section 12 of the Employment and Labour Relations Court, Act**, the Employment and Labour Relations Court had the jurisdiction to determine the Petition.

5. It was the Respondent's case that disputes between employers and employees fell within the provisions of **section 12 of the Employment and Labour Relations Court Act**. It was the Respondent's further case that the Petitioner was a stranger to the Respondent and that there was no employee-employer relationship with him. That the Petitioner was a representative of the Trade Union that represented the Interested Parties.

The Response

6. The Petitioner filed a Replying Affidavit dated 20th August 2025 and stated that he was an advocate of the high court of Kenya and a public-spirited citizen who was passionate about the promotion of human rights and thus had locus standi donated to him by **Article 22 and 258 of the Constitution of Kenya.**

7. It was the Petitioner's case that **Article 23** read conjunctively with **Article 165 of the Constitution of Kenya** grants the High Court original jurisdiction to hear and determine Applications for redress of a denial, violation or infringement of human rights. That the Employment and Labour Relations Court is vested with jurisdiction over disputes which relate to employment and labour between employees, trade unions and employer organizations or federations. It was the Petitioner's further case that the instant Petition pertained to the legality or constitutionality of the Respondent's lay off programme which was an unknown concept under the law.

8. The Petitioner stated that the High Court had unlimited original jurisdiction in criminal and civil matters and the jurisdiction to determine the question whether a right or a fundamental freedom in the Bill of Rights had been denied, violated, infringed or threatened.

9. Through its written submissions dated 20th August 2025, the Petitioner submitted that the jurisdiction of the Employment and Labour Relations Court was restricted to instances where there existed an employee-employer relationship, which was not the case in the present Petition. He relied on **Joy Brenda Masinde vs Law Society of Kenya & another (2015) eKLR**, **Nick Githinji Ndichu vs Clerk Kiambu County Assembly & another (2014) eKLR et.al.**

10. Having gone through the court record and pleadings above, the only issue for my determination was whether this court

has the jurisdiction to determine the Petition dated 24th March 2025.

11. The Court of Appeal in **Public Service Commission & 4 others v Cheruiyot & 20 others (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment)** discussed the issue of jurisdiction to wit: -

“Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated

before it or to take cognizance of the 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 kind and nature of the actions and matters of which the particular court has cognizance, 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 judgment is given.”

The locus classicus on jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S’ v Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:

“...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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

The Supreme Court In the Matter of Interim Independent Electoral Commission [2011] eKLR, Constitutional Application No 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the Constitution, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:

“...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 Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, Application No 2 of 2011, the Supreme Court reiterated its holding on a court's jurisdiction. In the matter of the Interim Independent Electoral Commission (supra) at paragraph 68 of its ruling, the Supreme Court held as follows:

“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.”

12. In the present matter, the Respondent stated that this court did not have the jurisdiction to deal with the Petition as the matters in dispute fell under the jurisdiction of the

Employment and Labour Relations Court. On the other hand, the Petitioner stated that this court had unlimited original jurisdiction to determine the Petition. The Petitioner further stated that the Petition concerned itself with the Respondent's lay off programme and did not concern itself with the issue of an employer-employee dispute.

13. The **Employment and Labour Relations Court Act** is described as an Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes. **Section 12 (1) of the Employment and Labour Relations Court Act** provides: -

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.

14. I have keenly gone through the Petition and in particular, the specific violations of the Constitution by the Respondent as alleged by the Petitioner. The Petitioner stated that the Respondent unilaterally implemented a lay off programme. The Petitioner further stated that the sudden and arbitrary decision by the Respondent to deduct the Interested Parties' salaries was in total disregard to the binding employment contracts and Article 47(2)a of the Constitution of Kenya which guaranteed every employee a right to fair remuneration.

15. From the above, it is clear to me that for the court to determine the issues of the legality or illegality of the implementation of the layoff programme and the deduction of salaries, it would have to interrogate evidence presented by both parties in relation to the employment between the

Respondent and the Interested Parties. The said evidence would entail documents which include the employment contracts. This in my view was an employer-employee dispute. It is salient to note that the whole Petition as framed and the prayers sought clearly brought out this issue.

16.I agree with Odunga J. (as he then was) in **Maithya v Pharmacy and Poisons Board; Pharmaceutical Society of Kenya & another (Interested Parties) [2019] KEHC 8474 (KLR)** where he held: -

“Similarly, pursuant to Article 23(3) of the Constitution as read with section 12(3) of the Employment and Labour Relations Court Act, it is my view that the Employment and Labour Relations Court can grant reliefs in a constitutional petition. However, the jurisdiction to do so is confined to matters falling within Article 41 of the Constitution as read with section

12 of the Employment and Labour Relations Court Act.....

..... This window, it has been held, is to empower the Employment and Labour Relations Court to fully handle employment matters that are exclusively reserved for it under Article 162(2) of the Constitution of Kenya 2010. This position, in my view is the true interpretation of section 12 of the Employment and Labour Relations Act Cap 234B, Laws of Kenya

Therefore, the High Court does not have jurisdiction to determine matters that are a preserve of the Employment and Labour Relations Court and vice versa.....”

17. Flowing from the above and in reference to **section 12 (1) of the Employment and Labour Relations Court Act**, it

is my finding that this court has no jurisdiction to determine the Petition. The same is vested in the Employment and Labour Relations Court which is vested with exclusive and original jurisdiction to hear and determine the present Petition. I have no option other than to down my tools.

18. In the end, the Petition dated 24th March 2025 is struck out.
Each Party to bear its own costs

19. File is closed.

Ruling delivered, dated and signed at Bomet this 19th Day of March, 2026.

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling Delivered in the presence of;
Susan/Siele Court Assistant
Petitioner - present

Bett for Opiyo for the Respondent

ORIGINAL