



REPUBLIC OF KENYA



Sadia & another v Rarieda Sub-County Fisheries Officer & 3 others (Petition E028 of 2023) [2024] KEELRC 77 (KLR) (31 January 2024) (Judgment)

Neutral citation: [2024] KEELRC 77 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E028 OF 2023**

S RADIDO, J

JANUARY 31, 2024

**IN THE MATTER OF ARTICLES 2(1), 3(1), 10, 19, 20, 22, 23, 27, 28,
47, 48, 50, 159 AND 165 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF DISENGAGEMENT FROM OFFICE OF THE CHAIRMAN
ADALO BEACH MANAGEMENT UNIT(BMU) JOSEPH OMONDI SADIA**

AND

**IN THE MATTER OF DISENGAGEMENT FROM OFFICE OF THE CHAIRMAN
WI-KWANG BEACH MANAGEMENT UNIT (BMU) DAVID OCHIENG MILANDO**

AND

**IN THE MATTER OF THE FAIR ADMINISTRATIVE
ACTIONS ACT CAP 296 LAWS OF KENYA**

AND

IN THE MATTER OF THE LAW REFORM ACT

BETWEEN

JOSEPH OMONDI SADIA 1ST PETITIONER

DAVID OCHIENG MILANDO 2ND PETITIONER

AND

RARIEDA SUB-COUNTY FISHERIES OFFICER 1ST RESPONDENT

**CHIEF OFFICER, DEPARTMENT OF AGRICULTURE, IRRIGATION, FOOD,
LIVESTOCK & FISHERIES 2ND RESPONDENT**

DIRECTOR OF FISHERIES, SIAYA COUNTY 3RD RESPONDENT

BMU NETWORK CHAIRMAN, RARIEDA SUB-COUNTY .. 4TH RESPONDENT



JUDGMENT

1. The Petitioners sued the Respondents alleging that the Respondents had illegally removed them from the positions of Chairmen Adalo Beach Management Unit and Wi-Kwang Beach Management Unit respectively.
2. The Respondents filed a replying affidavit in response to the Petition and the Court gave directions on 5 December 2023.
3. Pursuant to the directions, the Petitioners filed a further affidavit on 29 December 2023, and their submissions on 31 December 2023.
4. The Petitioners isolated the Issues for adjudication as:
 - i. Whether the Court has jurisdiction to determine this Application.
 - ii. Whether the letters dated 5th August, 2021 amounted to constructive dismissal?
 - iii. Whether the Petitioners are entitled to the prayers sought?
 - iv. Who should bear the costs of the Petition?
5. The 1st to 3rd Respondents filed their submissions on 19 January 2024. They identified the Issues for determination as:
 - i. Whether or not this Honourable Court has jurisdiction to hear and determine this Claim?
 - ii. Whether or not Adola was duly registered hence legible to have a chairperson?
 - iii. Whether or not the Petitioners have exhausted available mechanisms for dispute resolution as provided for under the relevant laws?
 - iv. Whether or not the Petitioners are entitled to damages?
6. The Court has considered the Petition, affidavits and submissions, and will adopt the Issues as isolated therein.

Jurisdiction

7. The Petitioners asserted that they were in an employer/employee relationship with the Respondents because they used to receive an honorarium based on the weight of fish caught and landed.
8. The Petitioners further urged that since the High Court had already held that it did not have jurisdiction and that the jurisdiction lay with this Court, then this Court would be purporting to sit on appeal over the holding by the High Court on the question of jurisdiction.
9. The Respondents denied that they had an employment relationship with the Petitioners or that they paid them an honorarium.
10. The jurisdiction of this Court is spelt out primarily in Article 162(1) of the *Constitution* and section 12 of the *Employment and Labour Relations Court Act* (there are other statutes clothing the Court with jurisdiction).



11. Section 2 of the *Employment Act* defines an employee as:
a person employed for wages or a salary and includes an apprentice and indentured learner.
12. The definition is a general one and the Courts have developed tests for determining the existence of an employer/employee relationship.
13. The Petitioners did not indicate to the High Court or this Court whether the honorarium paid to them was being paid by the County Government or any of its organs.
14. In the view of this Court, that was a material fact that should have been disclosed to enable the High Court to competently determine the question of jurisdiction.
15. They have also not demonstrated that any of the Respondents exercised control over their performance of duties as chairmen of the Beach Management Units or that they enjoyed any of the employment rights prescribed in the *Employment Act*, 2007 such as annual leave, house allowance, maternity or paternity leave.
16. Under the Fisheries (Beach Management Unit) Regulations, 2007, the County Government and or its designated officers merely play a regulatory role over the beach management units and their Executive Committees.
17. The Regulations and or such a regulatory function do not and cannot create an employment relationship between the officials of a Beach Management Unit, being elected officials and a County Government.
18. The suspension and or removal from office of the Petitioners was not an employment or labour-related issue as contemplated under the legal framework governing the disputes this Court can entertain.

Conclusion and Orders

19. In light of the above, the Court declines jurisdiction and strikes out the Petition.
20. No order on costs since the Respondents had also raised the question of the jurisdiction of the High Court.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 31ST DAY OF JANUARY 2024.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioners Osur & Associates Advocates

For Respondents County Attorney

Court Assistant Chrispo Aura

