



**Consumers Federation of Kenya (COFEK) v Cabinet Secretary for Industrialisation  
Trade and Enterprise Development & 3 others; Mutoro & another (Interested Parties)  
(Petition E151 of 2022) [2023] KEELRC 790 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 790 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E151 OF 2022  
MN NDUMA, J  
MARCH 23, 2023**

**BETWEEN**

**CONSUMERS FEDERATION OF KENYA (COFEK) ..... PETITIONER**

**AND**

**THE CABINET SECRETARY FOR INDUSTRIALISATION TRADE AND  
ENTERPRISE DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**SCRAP METAL COUNCIL ..... 3<sup>RD</sup> RESPONDENT**

**BETTY CHEMUTAI MAINA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**STEPHEN MUTORO ..... INTERESTED PARTY**

**LAW SOCIETY OF KENYA ..... INTERESTED PARTY**

**RULING**

1. The respondents have raised a Preliminary Objection to the Petition to wit:-
  - (a) That this Honourable Court lacks jurisdiction to entertain, to hear and determine the petition by dint of Article 162(2) and 165(a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act No. 10 of 2011.
  - (b) That the petitioner lacks the *Locus Standi* to institute and prosecute the suit.”
2. The cause of action in this petition is the decision by the 4<sup>th</sup> respondent, Cabinet Secretary Industrialization Trade and Enterprise Development vide a letter dated June 29<sup>th</sup> 2022 stopping the



petitioner and the 1<sup>st</sup> interested party from attending Council and Committee meetings of the 3<sup>rd</sup> respondent, Scrap Metal Council.

3. The Scrap Metal Council was established under the [Scrap Metal Act](#), 2015 which Act made provisions for the regulation of dealing in scrap metal.
4. The respondents submit that the dispute is not an Employment and Labour matter within the meaning under Section 12 of the [Employment and Labour Relations Court Act](#), 2011, (as amended) as read with Article 162(2) (a) and 165(3) (a) of the [Constitution](#).
5. That the Supreme Court in [Republic v Karisa Chengo & 2 Others](#) [2017] eKLR held:-

“The three were different and autonomous Courts and exercised different and distinct jurisdictions. As Article 165(5) of the Constitution precluded the High Court from entertaining matters reserved for the Environment and Land Court or the Employment or the Labour Relations Court, it was to be inferred, by the same token, that the Environment and Land Court and Employment and Labour Relations Court too could not hear matters reserved to the jurisdiction of the High Court.”

6. The Respondents assert that the dispute between the petitioner herein being the Consumers Federation of Kenya (COFEK) and the respondents is not a dispute arising out of or relating to employment and Labour Relations. That indeed the petitioner is not an employer organization as its title clearly demonstrates but is a consumer organization.
7. That membership to and attendance of Council meeting does not create an employer and employee relationship between the petitioner vide the 1<sup>st</sup> interested party and the Council.
8. The Court is referred to the decision of this Court in Nairobi Petition No. 11 of 2014, [Nick Gitbinji Ndichu v Clerk, Kiambu County Assembly and Another](#) in which the Court held:-

“.....It is clear from the foregoing that the law is not concerned with the method of acquiring an employee. The law does not concern itself with whether the person was appointed or elected rather the person must:-

- i. be having an oral or written contract of service;
- ii. be providing a service to a real or legal person;
- iii. be receiving a wage/salary for services rendered.

“If such a person has a dispute with the person with whom he/she has a contract of service and to whom he/she provides services for a wage or salary, the Court has jurisdiction over such dispute and has available remedies for that purpose.”

9. The 1<sup>st</sup> interested party is the Secretary General of the Petitioner and is the one who was barred by the respondents from attending Council meetings.
10. From the facts set out in the petition, the petitioner has not demonstrated that it is an organization concerned and or related with and or to Employment and Labour matters.
11. The petitioner has also not demonstrated that it has any employment and Labour relationship with the 1<sup>st</sup> and 3<sup>rd</sup> respondents. Attendance of meetings of the Council by the 1<sup>st</sup> interested party has not created an employment or labour relationship between the interested party and the 3<sup>rd</sup> respondent.



No contract of employment between the petitioner and the 3<sup>rd</sup> respondents has been adduced nor is it alleged that the interested party earns a wage and or salary by fact of attending meetings of the council.

12. The Court is guided by the decision of the Court of Appeal in *Mukisa Biscuit Manufacturing Company Limited v West end Distributors Limited* (1969) EA 696 and finds that the objection raised constitutes a pure point of law which arises by clear implication out of the petition and is capable of disposing the suit outrightly. That this Court clearly lacks jurisdiction to hear and determine this matter which matter involves interpretation of the [Scrap Metal, Act, 2015](#) and the composition of the membership of the Council established thereof.
13. This matter falls within the jurisdiction of the High Court and this Court lacks jurisdiction to entertain the same.
14. However guided by the Court of Appeal decision in Civil Appeal No. 6 of 2012 in [Professor Mugendi v Kenyatta University, Benson Wairegi, Eliud Mathiu and Professor Olive Mugenda](#) which cited with approval Petition No. 170 of 2012 - *United States International University (USIU) v Attorney General and Others*, the Court does not strike out this suit for want of jurisdiction but instead refers the matter to the High Court which is clothed with jurisdiction to hear and determine the same.
15. Accordingly, the petition is referred to the High Court at Nairobi for determination.
16. It is so ordered.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23<sup>RD</sup> DAY OF MARCH, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mr Kanake for Petitioner

Mr. Odukenya for respondents

