



**Republic v Nursing Council of Kenya; Kisii County Public Service Board & another (Interested Parties); Oginda (Exparte Applicant) (Judicial Review E017 of 2022) [2023] KEELRC 692 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 692 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW E017 OF 2022  
CN BAARI, J  
MARCH 23, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NURSING COUNCIL OF KENYA ..... RESPONDENT**

**AND**

**THE KISII COUNTY PUBLIC SERVICE BOARD ..... INTERESTED PARTY**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS .... INTERESTED PARTY**

**AND**

**RISPER KERUBO OGINDA ..... EXPARTE APPLICANT**

**RULING**

1. Before Court is the Respondent’s Notice of Preliminary Objection dated 8<sup>th</sup> February, 2023, seeking that the suit herein be struck out on the basis that the Court lacks jurisdiction to entertain it; that it violates the doctrine of exhaustion; and that the administrative decision sought to be quashed is not before court.
2. Parties urged the Preliminary Objection on 14<sup>th</sup> February, 2023. The Respondent submitted that the issues subject of the Preliminary point of Objection, are matters of law; to wit jurisdiction of the Court to entertain this suit, and therefore the Preliminary Objection, meets the threshold set in *Mukisa Biscuit Manufacturing Co. Ltd v West-End Distributors Limited* – (1969) EA 696, hence the same should be allowed.



3. It is the Respondent's further submission that the jurisdiction of this Court is that set out in Section 12 of the [Employment and Labour Relations Court Act](#), and which in a nut shell, is to hear matters arising from employment contracts. It is the Respondent's submission that it is not the employer of the *Ex Parte* Applicant, and that in the absence of an employment relationship, this court lacks jurisdiction to entertain this suit.
4. Counsel for the 1<sup>st</sup> Interested Party associated himself with the submissions of the Respondent, and further submitted that this Court lacks jurisdiction to entertain this suit, premised on the absence of an employer-employee relationship between the Respondent and the Applicant.
5. It is the 1<sup>st</sup> Interested Party's further submission that no administrative decision has been taken against the Applicant to require the Court's intervention by way of judicial review orders. It is his submission that the Applicant is still working and being paid salary by her employer, the Interested party.
6. In opposition to the Preliminary Objection (P.O), Counsel for the Applicant submitted that the P.O is bereft of merit for reason that it does not raise pure points of law. It is the Applicant's submission that no Article of the [Constitution](#) or Section of the law has been cited to support this P.O.
7. It is Counsel for the Applicant's further argument that for reason that the Respondent went to the Applicant's place of work and confiscated her practicing certificate, makes this an employment claim.
8. Counsel further submits that this being a judicial review application, it is concerned with the process and not the merit of the decision

### **Determination**

9. The issue that present for determination herein, is whether this Court has jurisdiction to entertain this suit. The argument is that what is before court is not an employment dispute for there being no employment relationship between the Applicant and the Respondent.
10. A Court's jurisdiction flows from either the [Constitution](#) or legislation or both, and it is settled that a court cannot arrogate itself jurisdiction through the craft of interpretation, and decisions made by a court of law without proper jurisdiction are a nullity *ab initio*.
11. The Court of Appeal in [Public Service Commission & 4 others v Cheruiyot & 20 others](#) [2022] KECA 15 (KLR) held thus on the jurisdiction of the Employment and Labour Court: -
 

“Therefore, for want of an employee-employer relationship, we find and hold that the Employment and Labour Relations Court arrogated itself jurisdiction that exceeded that conferred upon it by law, which renders its decision a nullity *ab initio*.”
12. It is not disputed that the *Ex Parte* Applicant is not an employee of the Respondent. The Applicant's only assertion in this regard, is that the Respondent went to the Applicant's place of work and confiscated her practice license on the basis that it had expired, and which confiscation is the genesis of this suit. The *Ex Parte* Applicant was not terminated/dissmised and the 1<sup>st</sup> interested party confirmed that she still works for them and receiving her salary.
13. The suit before Court is for judicial review orders against the decision by the Respondent to confiscate the Applicant's license. In my considered view, this is not an employment matter as to fall within the jurisdiction of this Court.
14. The Applicant and the Respondent have no employment relationship and, in this regard, the suit does not fall within the purview of Section 12 of the [Employment and Labour Relations Court Act](#).



15. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1. Nyarangi, JA 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.”

16. In the circumstances, and for the reasons foregone, this Court lacks jurisdiction to entertain the *Ex Parte* Applicant’s judicial review application, and the same is struck out in its entirety.

17. Parties shall bear their own costs of the suit.

18. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 23<sup>RD</sup> DAY OF MARCH, 2023.**

**CHRISTINE N. BAARI**

**JUDGE**

Appearance :

N/A for the *Ex Parte* Applicant.

Mr. Ayub Present for the Respondent

Mr. Kaburi present for the Interested Party.

