



**Mboya v Pharmacy and Poisons Board & 3 others (Petition  
E030 of 2023) [2023] KEELRC 1042 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1042 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E030 OF 2023**

**L NDOLO, J**

**APRIL 27, 2023**

**IN THE MATTER OF ARTICLES 2, 19, 20(1-4), 21(1) & (3), 22(1) & (2)(B) & (C),  
23(1) & (3), 27, 28, 41(1) & 2(B), 47, 48, 50(1), 73, 75, 159, 162(2)(A), 165(3)(B), 232,  
258(1) & (2)(B) & (C) AND 259(1) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF THE PHARMACY AND POISONS  
ACT, CHAPTER 244 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES**

**AND**

**IN THE MATTER OF CONTRAVENTION OF NATIONAL VALUES AND PRINCIPLES  
OF GOVERNANCE UNDER ARTICLE 10, THE PRINCIPLES OF LEADERSHIP  
AND INTEGRITY UNDER ARTICLE 73 AND THE VALUES AND PRINCIPLES OF  
PUBLIC SERVICE UNDER ARTICLE 232 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**APOLLO MBOYA ..... PETITIONER**

**AND**

**PHARMACY AND POISONS BOARD ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF HEALTH (STATE DEPARTMENT OF  
PUBLIC HEALTH & PROFESSIONAL STANDARDS) ..... 2<sup>ND</sup> RESPONDENT**

**DR. FRED MOIN SIYOI ..... 3<sup>RD</sup> RESPONDENT**



## RULING

1. The Petitioner filed a Petition and a Notice of Motion, both dated 1 February 7, 2023, challenging the appointment of the 3<sup>rd</sup> respondent, Dr. Fred Moin Siyoi as the CEO/Secretary of the 1<sup>st</sup> respondent.
2. Subsequently, the 1<sup>st</sup> respondent filed a notice of Preliminary Objection dated February 27, 2023, challenging the jurisdiction of this court to hear and determine the matter. This ruling relates to that Objection.
3. The 1<sup>st</sup> respondent bases its objection on the following grounds:
  - a) That the jurisdiction of this court has been wrongly invoked in total disregard of the provisions of section 12(1) of the [Employment and Labour Relations Court Act](#);
  - b) That no employer-employee relationship exists between the petitioner and any of the respondents.
4. In their written submissions, the parties appear to have subsumed the merits of the petitioner's application with the 1<sup>st</sup> respondent's Objection. I will however, at this stage, only deal with the Objection, as it challenges the jurisdiction of the Court to deal with this matter in the first place.
5. In urging its Objection, the 1<sup>st</sup> respondent relies on the decision in [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited](#) [2012] eKLR where the Supreme Court stated 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 to itself jurisdiction exceeding that which is conferred upon it by law.”
6. The 1<sup>st</sup> respondent submits that because there is no employment relationship between the petitioner and the respondents, then this court lacks jurisdiction to entertain the Petition and the Notice of Motion.
7. Further, the 1<sup>st</sup> respondent claims that the issue at hand is on leadership and/or membership of the 1<sup>st</sup> respondent, which issue is not employment related but an issue of directorship to be determined by the High Court.
8. The 3<sup>rd</sup> respondent associates himself with the 1<sup>st</sup> respondent's Objection. He submits that employment rights claims as raised by the petitioner are private rights claims.
9. On his part, the petitioner submits that under article 162(2)(a) of the [Constitution](#), this court has jurisdiction to hear and determine all employment and labour relations disputes. He relies on several decisions; [United States International University v Attorney General](#) [2012] eKLR; [Daniel N. Mugendi v Kenyatta University & 3 others](#) [2013] eKLR; [Ali Jarso Wako & another v Ministry of Interior & Coordination of National Government & 5 others](#); [Public Service Commission & 5 others \(Interested Parties\)](#) [2020] eKLR.



10. The petitioner further relies on the Supreme Court decision in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2014] eKLR where it was held that:

“...the promulgation of the 2010 Constitution enlarged the scope of locus standi in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the courts contesting any contravention of the Bill of Rights, or the *Constitution* in general.”

11. The jurisdiction of this Court is anchored in article 162(2)(a) of the *Constitution* which provides as follows:

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

- (a) employment and labour relations; and
- (b) ...

12. Pursuant to this constitutional edict, Parliament enacted the *Employment and Labour Relations Court Act*, which at section 12(1) provides as follows:

12. Jurisdiction of the court

(1) 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 employer’s organisation and a trade union’s organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organisations;
- (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.



13. My reading of the foregoing constitutional and statutory provisions is that the jurisdiction to hear and determine all matters, where the dominant cause of action is employment related, resides in this Court. The naming of parties to disputes under section 12 of the *Employment and Labour Relations Court Act* cannot therefore be used to limit the very wide jurisdiction granted by article 162(2)(a) of *the Constitution*.
14. Moreover, under articles 22 and 258 of the *Constitution*, any person has a right to institute court proceedings claiming violation of the Bill of Rights or contravention of the *Constitution* generally. This would include a person acting in the public interest.
15. The subject of the petitioner's Petition and Notice of Motion is the appointment of the 3<sup>rd</sup> respondent to an office in the public service. this is clearly an employment matter within the jurisdiction of this court.
16. The 1<sup>st</sup> respondent's Objection is therefore not well taken and is overruled with costs in the Petition.
17. The parties are directed to fix the petitioner's Notice of Motion for hearing on priority basis.
18. Orders accordingly

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

**Apollo Mboya (the Petitioner in person)**

**Ms. Saina for the 1<sup>st</sup> Respondent**

**Mr. Malenya for the 3<sup>rd</sup> Respondent**

**No appearance for the 2<sup>nd</sup> and 4<sup>th</sup> Respondents**

