



**Okello v Sacco Societies Regulatory Authority & another (Employment and Labour Relations Cause E490 of 2023) [2023] KEELRC 2669 (KLR) (30 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2669 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E490 OF 2023**

**BOM MANANI, J  
OCTOBER 30, 2023**

**BETWEEN**

**OKUNGU ELIEZER OKELLO ..... CLAIMANT**

**AND**

**THE SACCO SOCIETIES REGULATORY AUTHORITY ..... 1<sup>ST</sup> RESPONDENT  
CHUNA DT SAVINGS AND CREDIT CO-OPERATIVE  
SOCIETY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. The 1<sup>st</sup> Respondent is a regulatory body established under section 4 of the *Sacco Societies Act*, 2008. Its functions are set out under section 5 of the Act. These are to: -
  - a. license Sacco societies to carry out deposit-taking business in accordance with the Act;
  - b. regulate and supervise Sacco societies;
  - c. hold, manage and apply the General Fund of the Authority in accordance with the provisions of the Act;
  - d. levy contributions in accordance with the Act;
  - e. do all such other things as may be lawfully directed by the Cabinet Secretary; and
  - f. perform such other functions as are conferred on it by the Act or by any other written law.
2. The 2<sup>nd</sup> Respondent is a Sacco society that is registered under the *Sacco Societies Act*, 2008. Therefore, the 2<sup>nd</sup> Respondent is, in law, subject to the regulatory powers of the 1<sup>st</sup> Respondent.



3. The Claimant is the Chief Executive Officer (CEO) of the 2<sup>nd</sup> Respondent. Consequently and for all purposes and intents, the Claimant and 2<sup>nd</sup> Respondent have an employment relation.
4. The documents on the court file show that the 2<sup>nd</sup> Respondent hired the services of the Claimant on 20<sup>th</sup> February 2023. In line with the regulatory requirements under the Sacco Societies Act, the 2<sup>nd</sup> Respondent wrote to the 1<sup>st</sup> Respondent on 25<sup>th</sup> May 2023 notifying the latter of this appointment.
5. On 6<sup>th</sup> June 2023 the 1<sup>st</sup> Respondent wrote to the Claimant intimating that whilst he was serving in a number of Sacco societies, he (the Claimant) engaged in activities that exposed the said societies to risky business practices. The 1<sup>st</sup> Respondent asserted that the Claimant's activities contravened the Sacco Societies Act and regulations there-under. As such, the 1<sup>st</sup> Respondent contended that the Claimant's conduct was perilous to the interests of the members of the affected Sacco societies and the public.
6. The 1<sup>st</sup> Respondent directed the 2<sup>nd</sup> Respondent to suspend the Claimant from executing his functions as CEO of the 2<sup>nd</sup> Respondent pending conclusion of an inquiry into his conduct. At the same time, the 1<sup>st</sup> Respondent asked the Claimant to justify why he should continue serving as an officer of a Sacco society.
7. On 12<sup>th</sup> June 2023 and in compliance with the directive by the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent wrote to the Claimant asking him to hand over his functions to another employee in acting capacity pending finalization of the aforesaid inquiry by the 1<sup>st</sup> Respondent. The suspension was to remain in force for the duration that the 1<sup>st</sup> Respondent had directed.
8. It is this development that triggered the current action. It is the Claimant's case that the 1<sup>st</sup> Respondent is not his employer. The Claimant contends that the 1<sup>st</sup> Respondent has no powers to meddle into his contract of employment with the 2<sup>nd</sup> Respondent. As such, it is the Claimant's position that the decision by the 2<sup>nd</sup> Respondent to suspend him from duty, so far as it was instigated by the 1<sup>st</sup> Respondent, is illegal.
9. On the contrary, the 1<sup>st</sup> Respondent contends that as a Sacco societies' regulator, it has power to inquire into activities by Sacco societies in order to prevent exposure of the Sacco members and the general public to harm. In the 1<sup>st</sup> Respondent's view, this mandate necessarily extends to monitoring the conduct of employees of Sacco societies to ensure that they do not expose the public to harm. It is the 1<sup>st</sup> Respondent's contention that this power entitles it to require a Sacco society to take action against an employee whose conduct the 1<sup>st</sup> Respondent does not approve of. The provisions that the 1<sup>st</sup> Respondent relies on to advance the above argument include the following: -
  - a. Section 51(c) of the Sacco Societies Act which provides as follows with respect to the powers of the 1<sup>st</sup> Respondent: -

"Where the Authority determines that a Sacco society conducts its business in a manner contrary to the provisions of this Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall direct the suspension or removal of any officer involved in such conduct from the service of society."
  - b. Section 52(1)(c) of the Act which provides as follows:-

"Where the Authority takes an enforcement action under section 51 it may by notice in the Gazette, revoke or cancel any existing power of attorney, mandate,



appointment or other authority by an institution in favour of any officer or employee or any other person.”

- c. Regulation 67(4) of the [Sacco Societies \(Deposit-Taking Sacco Business\) Regulations](#), 2010 which provides as follows:-

“Where the Authority has reasonable grounds to believe that an officer of a Sacco Society is engaged or is likely to engage in any act or practice which has occasioned or is likely to occasion a contravention of the provisions of the Act or any regulations or any other law in any manner detrimental to or not in the best interest of its members or of the members of the public, or the survival of the Sacco Society, or has committed an offence, the Authority shall issue administrative directions regarding measures to be complied with or impose such sanctions to be taken against the said officer as it may deem fit as provided for under these Regulations.”

- d. Regulation 72 of the aforesaid regulations which provides as follows:-

“The Authority may prohibit an individual from seeking to be a director or employee if he or she is likely to pose a threat to the interest or threaten to impair public confidence in the Sacco Society.”

10. It is the 1<sup>st</sup> Respondent’s contention that the above and various other provisions of the [Sacco Societies Act](#) entitle it to take the action it did against the Claimant albeit outside the parameters of an employment relation. The 1<sup>st</sup> Respondent contends that its action against the Claimant was justified.

### **Preliminary Objection**

11. The 1<sup>st</sup> Respondent has objected to the court’s jurisdiction to entertain this action. The objection is anchored on two grounds namely: -
- a. That the court lacks jurisdiction to entertain the cause as filed.
  - b. That the cause lodged by the Claimant offends the provisions of section 92(2) of the [Employment Act](#).
12. The court directed that the objection be canvassed by way of written submissions. The parties have since filed their respective submissions.

### **Analysis**

13. Although the 1<sup>st</sup> Respondent has raised two preliminary points of law, I will only address the broad issue of jurisdiction of the Employment and Labour Relations Court (ELRC) to entertain the current dispute. From the submissions that are on record, it is evident that the 1<sup>st</sup> Respondent’s objection in this respect is premised on section 12 of the [Employment and Labour Relations Court Act](#) (ELRC Act). According to the 1<sup>st</sup> Respondent, this provision entitles this court to adjudicate on disputes that are anchored on an employment and labour relation. The 1<sup>st</sup> Respondent’s position is that in order for the ELRC to assume jurisdiction over a matter, the dispute before it must have arisen from an employer-employee or labour relation.
14. The 1<sup>st</sup> Respondent submits that there is no employment relation between it and the Claimant. According to the 1<sup>st</sup> Respondent, the dispute between it and the Claimant arose from the exercise of its regulatory mandate under the [Sacco Societies Act](#) and not an employment relation with the Claimant.



Therefore, the matter lies outside the adjudicatory powers of the ELRC as delineated under section 12 of the [ELRC Act](#).

15. On the other hand, the Claimant contends that this court has the requisite jurisdiction to entertain the dispute. The Claimant submits that article 162 of the [Constitution](#) vests in ELRC the power to hear all matters that touch on employment and labour relations. The Claimant submits that the decision by the 1<sup>st</sup> Respondent to instigate his suspension from work has affected his employment contract. As such, it is a matter over which this court has jurisdiction in terms of article 162 of the [Constitution](#) as read with section 12 of the [ELRC Act](#).
16. The Claimant further contends that the provisions of the [Sacco Societies Act](#) which the 1<sup>st</sup> Respondent has invoked cannot have been intended to oust the ELRC's jurisdiction to interrogate regulatory acts which impact on contracts of service. The Claimant further contends that the [Sacco Societies Act](#) has no procedure for removal of Sacco societies' employees who are affected by the exercise of regulatory powers by the 1<sup>st</sup> Respondent. Therefore, recourse must be had to the [Employment Act](#) to determine the procedure for removal of such employees thus bringing such proceedings within the purview of the ELRC.
17. On its part, the 2<sup>nd</sup> Respondent has relied on the preamble to the [ELRC Act](#) to contend that this court has jurisdiction over the dispute between the Claimant and the 1<sup>st</sup> Respondent. According to the 2<sup>nd</sup> Respondent, the ELRC was established in order to hear and determine disputes relating to employment and labour relations and for connected purposes. The 2<sup>nd</sup> Respondent contends that this purpose is wide enough to allow the court to adjudicate on the instant dispute as the matter under consideration arises from and is connected to an employment relation.
18. Further, the 2<sup>nd</sup> Respondent has relied on section 12 (1) of the [ELRC Act](#) to contend that the list of matters that the ELRC can handle under the section is not a closed one. As such and by virtue of this provision, the court ought to assume jurisdiction over the dispute.
19. According to the 2<sup>nd</sup> Respondent, the use of the phrase "including" under section 12(1) of the Act is permissive in nature. It allows the ELRC to bring on board disputes which though not arising from an employment or labour relation affect the relation.
20. I must admit that the argument by the 2<sup>nd</sup> Respondent is quite persuasive. It expresses a view that is widely thought to be the correct interpretation of section 12 of the [ELRC Act](#).
21. However, this view has not gained favour with the Court of Appeal. As such, it does not represent the current position regarding the ELRC's jurisdictional limits.
22. The position that has been taken by the Court of Appeal leans towards the view that for the ELRC to assume jurisdiction over a matter, such matter must have arisen from an employment and labour relation. Put differently, the ELRC can only act on a matter that involves individuals who have an employment and or labour relation.
23. In its recent decision in [National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others](#) (Civil Appeal 656 of 2022) [2023] KECA 80 (KLR), the Court of Appeal emphasized this position. It underscored the fact that for the ELRC to adjudicate on a matter, the dispute must have its roots in an employment and or labour relation.



24. In addressing whether the ELRC was entitled to consider the constitutionality of legislation, the Court of Appeal expressed itself as follows:-

“The issue under consideration in the petitions was the constitutional validity of a statute and or some specific provisions of the act. The constitutional validity of the statute or the targeted provisions did not arise from an employer-employee dispute.”

25. In rejecting the argument that the ELRC was entitled to expand its jurisdiction by invoking the phrases “connected thereto” and “including” that are used in the preamble to and section 12(1) of the Act, the court observed that the context in which the phrases were used did not permit their invocation to expand the jurisdiction of the ELRC. To underscore this point, the court observed as follows: -

“The intention of Parliament is clear both from the preamble and section 12(1) (a)-(f). The ELRC Act was enacted to resolve employer-employee disputes as provided by article 162 (a) of the *Constitution*. That is the purpose and context which cannot be ignored in interpreting provisions of the act. Decided cases are in agreement that constitutional issues can be determined by the ELRC only if they arise from an employer-employee dispute. The germane issue framed by the court did not arise in an employer-employee dispute nor does it fall under section 12(1) (a)-(f).”

26. By parity of reasoning, the issue that the Claimant challenges in the instant case is about the legality of the 1<sup>st</sup> Respondent’s action to require the 2<sup>nd</sup> Respondent to suspend him in exercise of its regulatory powers under the *Sacco Societies Act*. Although the exercise of the powers does affect the Claimant’s employment, the powers are exercised outside an employment relation. The powers arise from an entirely distinct statutory engagement under which the 1<sup>st</sup> Respondent is acting as a regulator of Sacco societies rather than as the employer of the individuals who work for the Sacco societies. There being no employment or labour relation between the Claimant and the 1<sup>st</sup> Respondent and having regard to the views expressed by the Court of Appeal above, it is doubtful that this court has jurisdiction to entertain the dispute between the two.

27. That said, the challenge that this restrictive interpretation of the ELRC’s jurisdiction presents is that the ELRC will not be in a position to intervene in situations where third parties who have no employment and labour relations with employees engage in acts which impact on the employees’ employment rights. The court will not be entitled to invoke the preamble to the *ELRC Act* or section 12 thereof to expand its jurisdictional reach to cover incidents such as this if they do not explicitly fall in the list that is prescribed under section 12 (1) of the Act (also see *Mwangi v Attorney General & 2 others* (Petition E163 of 2022) [2023] KEELRC 2538 (KLR) (19 October 2023) (Ruling)).

### **Determination**

28. Having regard to the foregoing, I reach the conclusion that the dispute between the Claimant and the 1<sup>st</sup> Respondent falls outside the jurisdictional purview of this court.

29. Consequently, the claim by the Claimant that touches on the 1<sup>st</sup> Respondent is struck out.

30. As the 1<sup>st</sup> Respondent was yet to file a substantive defense to the claim outside the preliminary point of law that was raised, I make no order as to costs.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF OCTOBER, 2023**

**B. O. M. MANANI**

**JUDGE**



## **ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

