



Republic v Chief Magistrate Court, Migori; John & 10 others (Interested Parties) (Judicial Review Application E001 of 2023) [2023] KEELRC 2546 (KLR) (19 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2546 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E001 OF 2023
CN BAARI, J
OCTOBER 19, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF MAGISTRATE COURT, MIGORI RESPONDENT

AND

MOKORO JARED JOHN INTERESTED PARTY

BEATRICE AOKO OCHIENG INTERESTED PARTY

CLERK COUNTY ASSEMBLY OF MIGORI INTERESTED PARTY

COUNTY ASSEMBLY OF MIGORI INTERESTED PARTY

MIGORI COUNTY PUBLIC SERVICE BOARD INTERESTED PARTY

HON JARED ODHIAMBO OPIYO INTERESTED PARTY

MS JEMIMAH ADHIAMBO WERE INTERESTED PARTY

MR HESBON OTIENO OMWA INTERESTED PARTY

MR ENOCK ODHIAMBO OCHING INTERESTED PARTY

MS PHOEBE ADHIAMBO ALOO INTERESTED PARTY

MR RANGE MWITA MAROA INTERESTED PARTY

JUDGMENT

1. This judgment relates to the Ex-parte Applicant’s notice of motion application dated 8th February, 2023. The Applicant seeks the following reliefs;



- a. That the Court be pleased to grant an order of judicial review by way of certiorari, to bring into this Court and to quash the Ex Parte proceedings and Order of the Migori Chief Magistrates Court made on 30th January, 2023 in Migori CMCC No. E012 of 2023 – Mokoro Jared John & Beatrice Aoko Ocbieng v Speaker, County Assembly of Migori, Clerk, County Assembly of Migori and the County assembly of Migori, issued in favour of the 1st and 2nd Interested Parties.
 - b. That the Court be pleased to grant an order of judicial review by way of Prohibition, prohibiting the Respondent, Chief Magistrates Court Migori, and or any other Magistrate in that station, and or from any other station, from continuing with the hearing and/or otherwise handling any aspect of proceedings in Migori CMCC No. E012 of 2023 unless otherwise for purposes of terminating the same finally.
 - c. That the costs of this application be provided for.
2. The motion is supported by grounds on the face thereof and the affidavit of Hon. Charles Owino Oyugi sworn on 8th February, 2023. The crux of the application is that a subordinate Court contemplated under Article 169(1)(2)- of the Constitution, and presided over by a Principal Magistrate, does not have powers and/or jurisdiction to supervise over any person and/or body or authority exercising a judicial or quasi-judicial function and/or court.
 3. It is the Ex parte Applicant’s aversion that the Respondent acted ultra vires and without jurisdiction in handling the subject matter of the dispute.
 4. The Ex Parte Applicant further avers that the subject matter of the proceedings before the 1st Respondent in Migori CMCC No. E012 of 2023, is the same subject this Court is seized of in Kisumu ELRC Petition No. E002 of 2023, which concerns the consideration by the County Assembly of Migori of petitions lodged pursuant to Section 15(1) of the County Government Act, and as progressed pursuant to the provisions of Petitions to County Assemblies (Procurement Act).
 5. The Applicant further avers that the 1st and 2nd Interested Parties through their Advocate on record in Migori CMCC No. E012 of 2023, are fully aware of the existence of in Kisumu ELRC Petition No. E002 of 2023, together with the proceedings and orders so far taken, as Mr. Bashir Advocate and Mr. Lusi, Advocate appeared and represented the Petitioners in the petition on 26th January 2023.
 6. It is the Applicant’s submission that the proceedings in Migori CMCC No. E012 of 2023 are sub judice Kisumu ELRC Petition No. E002 of 2023, and hence Migori CMCC No. E012 of 2023, is an abuse of the process of the Court and ought to be invalidated.
 7. The ex Parte Applicant avers that this being a Court of equal status to the High Court as contemplated under Article 162(2)(a) of the Constitution, it has supervisory power pursuant to article 165(6) and (7) of the Constitution over subordinate Courts that handle disputes contemplated under Article 162(2) (a) of the Constitution, as read with Section 12 of the Employment and Labour Relations Court Act.
 8. It is the Applicant’s case that the 1st and 2nd interested Parties do not have locus standi to commence and/or sustain the proceedings in Migori CMCC No. E012 of 2023, and that the Respondent did not have jurisdiction to entertain the proceedings as sought to be quashed.
 9. The Applicant further avers that the Respondent, being a subordinate Court, does not have jurisdiction to supervise over any person and/or body or authority exercising a judicial or quasi-judicial function or this court.
 10. The 5th Interested party filed an affidavit in reply to the motion sworn by one Judith A. Okinda, wherein, it supported the Ex Parte Applicant motion. The 5th Interested Party states that case No. E012



- of 2023 pending before the Chief Magistrates Court at Migori, is similar to Petition No. E002 of 2023, pending hearing before the Employment and Labour Relations Court (ELRC) at Kisumu
11. It is the 5th Interested Party's case that the Magistrate in Migori CMCC No. E012 of 2023, does not have jurisdiction to determine the matter and the orders issued in the matter earlier are null and void.
 12. The Respondent did not file any response or submissions nor did it participate in these proceedings despite being served.
 13. The 6th to 11th Interested parties opposed the motion vide a Replying affidavit sworn by Hon. Jared Odhiambo Opiyo. It is their case that they were lawfully appointed as Chairperson, Vice-chairperson, and members of the Migori County Public Service Board (MCPSB), after a competitive recruitment process and upon approval by the County Assembly of Migori in its plenary Session held on 27th February, 2020, and were to serve for a non-renewable term of 6 years.
 14. It is their further case that the Magistrates Court is empowered in law to hear and determine disputes on alleged subjection to actual and apprehended psychological torture, as well as to hear and determine disputes on alleged unfair administrative action under Sections 9(1) to 9(5), of the *Fair Administrative Actions Act* (FAAA), 2015.
 15. It is their further position that the 1st and 2nd Interested Parties have power to challenge the Ex-parte Applicant's decision touching on the functioning and constitution of the MCPSB, which is an issue affecting the public.
 16. It is the interested parties' prayer that this Court upholds the Constitutional and statutory authority vested in the Magistrates' Court in Migori, and allow it to resolve 'the dispute before it before invocation of this Court's supervisory or appellate jurisdiction as may be appropriate, if at all.

Submissions By The 5th Interested Party

17. The 5th Interested Party submits that Article 162(2) of the *Constitution* vests this Court with jurisdiction to hear and determine employment and Labour relations matters alongside claims of fundamental rights and ancillary and incident to employment and labour relations. It had reliance in the case of *United States International University (USIU) v Attorney General* (2012) eKLR to support this position.
18. It is the 5th Interested Party's further submission that the dispute between the parties herein in Migori CMCC No. E012 of 2023, is the removal from office of the 6th - 11th Interested Parties from the County Public Service Board of Migori County. It submits that the 6th - 11th Interested Parties are seeking to challenge their removal on the basis that their removal is in breach of their fundamental rights and freedoms under the Constitution.
19. It is the 5th Interested Party's submission that this is a dispute that is purely within the jurisdiction of the ELRC, and that the subordinate Court did not have jurisdiction to handle the matter in view of the fact that this Court is already handling a similar matter under Petition No. E002 of 2023.

The 6th - 11th Interested Parties' Submissions

20. It is their submission that the Chief Magistrates Court in Migori is conferred with jurisdiction to admit and determine the dispute herein, where the cause of action is anchored on alleged unfair administrative action and causation of actual or apprehended psychological torture in accordance with Section 8(1) & (2) of the *Magistrates Court Act*



21. It is their further submission that the Magistrates Court has jurisdiction to hear and determine disputes on alleged unfair administrative action under Section 9(1) to 9(5), *Fair Administrative Actions Act* (FAAA), 2015.
22. They submit that where the subject matter of what has been presented before the Chief Magistrate's Court in Migori is an alleged unfair administrative action by the Ex-parte Applicant as defined under Sections 2&3, *FAAA*, then the Respondent Court is conferred with jurisdiction, functions and powers. They had reliance in the case of *Owner of Motor the Motor Vessel "Lilian S" Vs Caltex Oil (Kenya) Limited*, (1989)eKLR where the Court of Appeal cited "*John Beecroft Saunders in a treatise headed Words and Phrases Legally defined* – Volume 3: I – N at page 113 thereof, in defining jurisdiction, to mean, "the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means."
23. It is their prayer that this Court upholds the decision of the Lower Court, and allow it to hear and finally determine the matter as it is clothed with the necessary jurisdiction.

Analysis and Determination

24. Upon careful consideration of the respective facts as presented by the parties herein, and the rival submissions, the issue that falls for determination is whether the Applicant merits the grant of the judicial review orders sought.
25. In *Republic vs National Land Commission and another; Ex parte Farmers Choice Limited* [2020] eKLR, the Court explained the concept of judicial review, relying on the case of *Municipal Council of Mombasa vs Republic Umoja Consultants Ltd*, Nairobi Civil Appeal No.185 of 2007 (2002) eKLR, as follows: -

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who make the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review.”
26. The Ex Parte Applicant's contention is that the 1st and 2nd Interested Parties do not have locus standi to commence and/or sustain the proceedings in Migori CMCC No. E012 of 2023, and that the Respondent did not have jurisdiction to entertain the proceedings sought to be quashed.
27. The subject matter of the proceedings before the Respondent in Migori CMCC No. E012 of 2023, is the consideration by the County Assembly of Migori of petitions lodged pursuant to Section 15(1) of the *County Government Act*, for the removal from office of the 6th – 11th Interested Parties. For this reason, this Court in a ruling rendered on 4th May, 2023, found the matter to be an employment dispute, hence falling within the jurisdiction of this Court.



28. It is not disputed that Magistrates Courts have jurisdiction to hear and determine employment matters subject to the pecuniary limits delegated under Gazette Notice No. 6024 of 22nd June, 2018, as read with Sections 7(1) and 9 of the [Magistrates Court Act](#).
29. The pecuniary jurisdiction of a Magistrates Court as per the delegation instrument is Kshs. 80,000. The issue then, is whether the Respondent Court had jurisdiction to grant the orders as it did, against the consideration of petitions filed for the removal of the 6th -11th Interested Parties.
30. The Court of Appeal in *Pastoli...vs...Kabala District Local Government Canal & others* (2008) 2EA 300 at pages 300-304, stated that a Court must examine how the decision was arrived at, whether those who made the decision had the power to make it, whether the persons affected by the decision were heard before it was made, and whether the decision-making body took into account relevant or irrelevant matters/factors.
31. The 6th – 11th Interested Parties’ assertion is that the Respondent has jurisdiction under the [Fair Administrative Actions Act](#), to handle the matter before it as the issues therein, involved exercise of administrative power.
32. Indeed, Article 47 of the [Constitution](#) provides for the right to a fair Administrative Action, and to give effect to Article 47, Parliament enacted the [Fair Administrative Action Act](#). Section 2 of the [Act](#), defines an “administrative action” to include—the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.
33. As correctly submitted by the Ex Parte Applicant, this Court, being a Court of equal status to the High Court as contemplated under Article 162(2)(a) of the [Constitution](#), has supervisory power pursuant to Article 165(6) and (7) of the [Constitution](#) over subordinate courts that handle disputes contemplated under Article 162(2)(a) of the Constitution as read with Section 12 of the [Employment and Labour Relations Court Act](#).
34. This Court’s supervisory power is however used sparingly, and only when the Lower Court or tribunal is shown to have exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. (See *R. v Magistrates Court, Mombasa, Absian Synergy Limited (Interested Party)* Judicial Review E033 of 2021 (2022) KEHC 10 (KLR))
35. It is thus clear that by dint of the pecuniary limits delegated to the Magistrates Court under Gazette Notice No. 6024 of 22nd June, 2018, as read with Sections 7(1) and 9 of the [Magistrates Court Act](#), the Respondent (Court) exceeded its jurisdiction in granting the orders now sought to be quashed.
36. In the premise, I find and hold that the Ex Parte Applicant’s motion dated 8th February, 2023, is merited. I allow the application and hereby issue an order of certiorari quashing the Ex Parte proceedings and Order of the Migori Chief Magistrates Court made on 30th January, 2023, in Migori CMCC No. E012 of 2023 – *Mokoro Jared John & Beatrice Aoko Ochieng v Speaker, County Assembly of Migori, Clerk, County Assembly of Migori and the County Assembly of Migori*, in favour of the 1st and 2nd Interested Parties.
37. I further issue an order of Prohibition, prohibiting the Respondent, Chief Magistrates Court Migori, and/or any other Magistrate in that station, and or from any other station, from continuing with the hearing and/or otherwise handling any aspect of the proceedings in Migori CMCC No. E012 of 2023.
38. An issue was raised on the pendency of a petition before this Court, being Kisumu ELRC Petition No. E002 of 2023, that is said to be similar to Migori CMCC No. E012 of 2023 that is in dispute herein.



39. The record available indicates that Kisumu ELRC Petition No. E002 of 2023, was already heard and determined vide a judgment rendered by Justice Radido on 24th May, 2023, and all that is pending in regard to that suit is taxation of costs. It is therefore not true that a similar suit exists on the same subject matter between the parties herein before this Court.
40. The Respondent did not defend the suit, hence I make no orders on costs.
41. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH DAY OF OCTOBER, 2023.

CHRISTINE N. BAARI

JUDGE

