



**Okello v Ms.Farida Karoney, Cabinet Secretary For Lands And Physical Planning & another;
Ethics And Anti Corruption Commission & another (Interested Parties) (Employment and Labour
Relations Petition E018 of 2021) [2022] KEELRC 12725 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12725 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS PETITION E018 OF 2021
HS WASILWA, J
SEPTEMBER 22, 2022**

BETWEEN

GEORGE OKELLO PETITIONER

AND

**MS.FARIDA KARONEY, CABINET SECRETARY FOR LANDS AND PHYSICAL
PLANNING 1ST RESPONDENT**

THE HON, ATTORNEY GENERAL 2ND RESPONDENT

AND

ETHICS AND ANTI CORRUPTION COMMISSION INTERESTED PARTY

PUBLIC SERVICE COMMISSION INTERESTED PARTY

JUDGMENT

1. The Petitioner instituted this suit vide a petition dated June 30, 2021, seeking the following Orders;
 - a. A declaration be and is hereby issued that Hon Farida Karoney having been declared to have violated Articles 6(3), 10,129(2), 232 as held in the Nairobi High Court Petition no E229 of 2020; Patrick Ngunjiri Vs Ms Farida Karoney-cabinet secretary, ministry of lands and physical planning and 3 others is unfit to hold any public office including that of the Cabinet Secretary, Lands and Physical Planning,
 - b. A declaration be and is hereby issued that any continued holding and discharge of duties of the office of the Cabinet Secretary for Lands and Physical Planning by Hon Farida Karoney in view of the declaration that she violated the Constitution shall be in breach of the Constitution.



- c. An order of prohibition do and is hereby issued against all arms of Government and or State Departments from employing the 1st Respondent, Hon Farida Karoney in any capacity as she is unfit to hold public office.
 - d. An order that the costs of this Petition be provided for.
2. The Petitioner describes himself as a law abiding citizen of Kenya, a public spirited individual, a human rights defender, and a strong believer in the rule of law and constitutionalism. The 1st Respondent is the Cabinet Secretary Ministry of Lands and Physical Planning responsible for registration, management and record keeping appointed as such by his Excellency the President of the Republic of Kenya. The 2nd Respondent is the Attorney General of Kenya established by Article 156 of the Constitution whose functions include being the principal legal adviser to the Government. The 1st Interested Party, the Ethics and Anti-Corruption Commission is a public body established under Section 3 (1) of the Ethics and Anti-Corruption Commission Act, 2011 to combat and prevent corruption, economic crime and unethical conduct in Kenya through law enforcement, prevention, public education, promotion of standards and practices of integrity, ethics and anti-corruption and the 2nd Interested Party is the Public Service Commission, an organ of the state charged with responsibility, pursuant to Article 234 of the Constitution of 2010 to appoint persons to hold or act in public offices, and to confirm appointments.

Locus standi and jurisdiction of the Court.

3. The Petitioner avers that, he obtains locus standi, pursuant to the aspiration provided for under Preamble to the Constitution, that provides for a Government based on the essential freedom, democracy, social justice, ethics, integrity. Article 3(1) of the Constitution of Kenya, which obligates the Petitioner to respect, uphold and defend the Constitution of Kenya, Article 22 of the Constitution of Kenya that vests on the Petitioner the locus standi to institute judicial proceedings on grounds that the Constitution or any provisions of the law have been violated and seek appropriate redress, Article 48 of the Constitution that enshrines the Petitioner's right to access justice, Article 50(1) of the Constitution that recognizes the Petitioner's right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before the Honourable Court, Article 258 of the Constitution of Kenya vests the Petitioner with locus standi, to institute Court proceedings to defend the values and principles in the Constitution whenever the Constitution is contravened or is threatened with contravention and Articles 1(c), 4(2), 10, 22, 23, 50(1), 159, 162, 165, 258 and 259 of the Constitution of Kenya, as read with Section 12 of the Employment and Labour Relations Court Act that vests jurisdiction on this Court, inter alia, to hear any questions regarding the violation of labour rights and workplace disputes; determining if acts or omissions are constitutional; and the interpretation of the Constitution, including questions of contradiction between any law and the Constitution, and to protect the Constitution from any threats or violations.

Factual Background

4. The facts leading to the filing of this petition is that 1st Respondent was appointed by the President of the Republic of Kenya and being a public officer, she is obligated by law to uphold the dictates of the Constitution by upholding and protecting the rule of law. That despite swearing to abide by the dictates of the Constitution and to discharge her duties in accordance with the provisions of the Constitution, she has deliberately been infringing on the provisions of the constitution and disobeying valid Court orders issued in Nairobi High Court in Petition No E229 of 2020; Patrick Ngunjiri VS Ms Farida Karoney & 3 others, which declared that the 1st Respondent herein had violated the Constitution especially Articles 6(3), 10, 129(2) and 232 of the Constitution. Further that,



5. The 1st Respondent has equally, knowingly disobeyed valid orders as per Eldoret Land and Environment Court JR Application No 4 of 2019 which orders were issued on the July 26, 2019 suspending the implementation of Legal Notice No 106 contained in Kenya Gazette Supplement No 101 issue of July 1, 2019 which she had gazetted relating to issuance of private leases. That despite the existence of these orders she has instructed her officers to continue issuing leases in contravention of the valid orders of the Court.
6. It is stated that, the Court was moved through contempt proceedings by the ex parte Applicant in the Eldoret Judicial review application and the Court gave the 1st Respondent an opportunity to purge the ongoing contempt and granted her 30 days to ensure compliance with the Court orders.
7. The 1st Respondent however in a show of defiance and contempt has continued to violate the orders of the Court by instructing her officers to continue issuing the private leases and currently faces contempt proceedings for the wilful disregard for the rule of law, which conduct constitutes a gross violation of the rule of law. It being one of the national values and principles of governance enshrined in Article 10 (2) of the Constitution and is in total breach of the cardinal provisions of Chapter Six of the Constitution that requires public officers to conduct their affairs with utmost integrity and dignity.
8. The conduct of the 1st Respondent of deliberately breaching the law and disobeying valid Court orders has exposed the public office she holds and the Courts of law to public odium, ridicule and embarrassment and she is thus unfit to continue holding any public office or transacting public affairs. The declaration by a Court that the 1st Respondent has violated the Constitution coupled with her undeterred acts of contempt of valid Court orders clearly demonstrates that she is a person of questionable integrity and her continued holding of public office is not only deceitful but also a violation of the constitutional chapter on leadership and integrity.
9. The Petitioner states that in addition to requisite academic and professional qualifications, a public officer must also be persons of impeccable ethical-conduct, integrity and positive track record in upholding and safeguarding the rule of law as a national value and principle. On the contrary that the 1st Respondent demonstrably is a person of questionable ethical conduct, integrity and her track record of violating the law and disobeying Court orders is a demonstration of a misguided civil servant that is out to bring disrepute to public office and create despondency and anarchy.
10. Indeed, that any continued holding of the position of Cabinet Secretary, Lands And Physical Planning by the 1st Respondent, Hon. Farida Karoney in view of the demonstrated violation of the Constitution as declared by a Court would be in contravention of the Constitution and shall expose the public office she currently holds to ridicule and further create a bad precedent that persons of questionable integrity and who have been declared to have violated the Constitution can continue holding and serve in public offices regardless. He then urged this Court to find the 1st Respondent unfit to hold office.
11. He stated further that in addition to the provisions of Constitution that have been violated by the 1st Respondent, she violated Articles 73 and 232 of the Constitution.
12. The Petition is also supported by the by the affidavit of the Petitioner deposed upon on the June 30, 2022.

Responses.

13. In response to the Petition, the Honourable Attorney general acting for the Respondents and the 1st Interested party raised a preliminary objection dated September 23, 2021 on the following grounds;



- a. That cabinet secretaries are appointed by his Excellency the president pursuant to Articles 152 of the [Constitution](#) and that they serve at the pleasure of the President.
 - b. That the [Constitution](#) in Article 152 (5) and (6) provides for a process and mode of which Cabinet Secretaries can be dismissed from office upon gross violation of the [Constitution](#);
 - c. That enforcement of Chapter IV of the [Constitution](#) is the mandate of the Ethics and Anti-Corruption Commission as stipulated under Section 4 of the [Leadership and Integrity Act](#) and the process thereof is enumerated under Section 42.
 - d. That in the circumstances it is clear that the Petitioner has not exhausted all the other available remedies and this honourable Court cannot have jurisdiction in the first instance to hear and determine the issues in this petition.
 - e. That the issues raised herein are not issues under the [Employment Act](#) but issues under Schedule iv of the [Constitution](#) and Article 232 and 152 of the [Constitution](#) hence the Court does not have jurisdiction to determine them.
 - f. That on a foregoing they pray that the petition be struck out for lack of jurisdiction.
14. In response to the Preliminary Objection, the Petitioner, filed a replying affidavit sworn on the October 22, 2021, averring that this Court is clothed with jurisdiction under Article 162(2)(a) of the [Constitution](#), since the case herein touches on the employment services of the 1st Respondent and the constitutionality of her office in view of the findings of the Courts in High Court Nairobi and ELC Eldoret.
 15. He states that the Respondents, have misapprehended the provision of the law in suggesting that only the 1st Interested party can enforce the provisions of Chapter six of the [Constitution](#). He added that this Court is vested with powers to safeguard and protect the [Constitution](#) as well.
 16. Contrary to the allegation of the Respondents that the Petitioner ought to have petition the National assembly in seeking the reliefs sought, the Petitioner contends that he is seeking redress from this Court as the issue at hand emanates from the decisions of the Court. Therefore, that there are no fresh complaints to warrant the application of Article 152 of the [Constitution](#).
 17. The Petitioner also filed a supplementary affidavit on February 15, 2022, stating that the 1st Respondent was found in contempt of Court in Eldoret ELC case number 4 of 2019 in the ruling delivered by the Court on December 8, 2021, which gave the 1st Respondent an additional period of one month to purge the contempt, failure to which she would be condemned to pay a fine of 20 Million or be committed to civil jail for 2 years.
 18. In addition to the Preliminary objection the Respondents filed Grounds of Opposition dated January 28, 2022 which came out as follows;
 - a. The Petitioner has not exhausted the provisions of article 152 of the [Constitution](#) as regards the removal of a Cabinet Secretary from office.
 - b. The Petition has not met the threshold for the grant of the orders sought.
 - c. The Court lacks Jurisdiction to grant the prayers sought.
 - d. On the foregoing the Application and Petition is misconceived and a proper candidate for dismissal with costs to the defendants.



19. The 1st Respondent through the firm of VA Nyamodi and company advocates filed a replying affidavit sworn by Farida Karoney on March 9, 2022. In the affidavit the 1st Respondent states that she was appointed by the President in February, 2018 following approval of the National Assembly.
20. She states that the Constitution provides for an elaborates way under Article 152 of the Constitution, under which a Cabinet secretary can be removed from office. Additionally, that members of the public are empowered under Article 199 of the Constitution to Petition the National assembly to initiate process of removal of a cabinet secretary.
21. It is contended that the Petitioner has not exhausted the process stated above toward her removal from office. Further that the Petitioner has not demonstrated the alleged violation of the Constitution that would warrant her removal from office.
22. She denied disobeying any orders of the Court and stated that indeed the ELC Court in Eldoret considered an application for contempt and delivered its ruling on the November 2, 2020 dismissing the said application and finding that the applicant had failed to prove the allegations to the required standard.
23. On the Orders issued in Nairobi High Court Petition E0229 of 2022, the 1st Respondent states that the Court indeed directed her to re-open the registries in Ardhi house for half a day, while ensuring compliance with Covid-19 protocols, which orders were duly complied with.
24. It is the 1st Respondent's contention that the Petitioner is using these proceedings contrary to the law to enforce the Orders of the Court in Eldoret ELC and High Court Nairobi.
25. Accompanying the replying affidavit is a Preliminary objection which came out as follows;
 - a. That this petition is seeking to remove the 1st Respondent from office in a manner that violates the provisions of Article 152(6)(7)(8)(9) and (10) of the Constitution, which provides the process for removal of the 1st Respondent from office on inter-alia grounds of violations of the provisions of the Constitution or of any other law.
 - b. That this honourable Court lacks jurisdiction to entertain this matter as there is a prescribed process under the Constitution for removal of the 1st Respondent from office.
 - c. Th Petitioner has not exhausted the remedies provided for under Article 152(6)(7)(8)(9) & (10) of the Constitution, which remedy is available to the Petitioner.
 - d. That the Petitioner has failed to demonstrate the inadequacy of the remedy provided under Articles 152(6)(7)(8)(9)&(10) of the Constitution so as to place the Petition and the Application within exception to the exhaustion doctrine.
 - e. There is no employer-employee relationship between the Petitioner and the 1st Respondent that would clothe this Court with Jurisdiction as demarcated in Article 162(2) of the Constitution and section 12 of the Employment and Labour Relations Court Act.
 - f. That the Petitioner is suing these proceedings as enforcement proceedings and the judgement delivered in Eldoret ELC Application number 4 of 2019 and the Nairobi High Court Petition number E0299 of 2020, contrary to the law.
26. This Petition was canvassed by way of written submission with the Petitioner filing on February 15, 2022, the Respondent filed two sets of submission on the January 19, 2022 & January 28, 2022, while the 1st Respondent filed her own submission on the March 29, 2022.



Petitioners Submissions.

27. The Petitioner opened his submission by submitting that it is a cardinal principle that all person holding public offices must be compliant with the provisions of the Chapter six of the Constitution and therefore must be of impeccable work ethics, character and integrity, and that any person who falls short of these requirements should be barred from holding any public office in the Kenya as held in Nicholas Rono V County Secretary County Government of Bomet & 3 others [2020] eKLR where the Court held that;

' In the circumstances the misrepresentation and concealment of information by the 4th Respondent for appointment as member of Bomet county Assembly Public Service Board being in breach of the Leadership and Integrity Act and also the Public officers Act, places him in bad standing to hold any public office.'

28. On the Jurisdiction question, the Petitioner submitted that this Court is clothed with immense powers to safeguard the rule of law and protect the Constitution from wanton abuse. Similarly, that the 1st Respondent, having abdicated her duties and violated the Constitution and the law, the Petitioner is justified to invoke the jurisdiction of this Court to safeguard against any further violation of the Constitution and in doing so, the employment status of the 1st Respondent shall be affected. To support his case, he relied on the case of Lillian W Mbogo V Cabinet Secretary Ministry of Public Service and Gender and another [2020] eKLR where the Court held that;

' The High Court in FIDA v Attorney General (2018) eKLR stated of the approach to Constitutional interpretation It is also beyond argument that Article 259 of the Constitution introduced a new approach to the interpretation of the Constitution. The Article obliges Courts to promote 'the spirit, purport, values and principles of the Constitution, advance the rule of Law, Human Rights and fundamental freedoms in the Bill of Rights and contribute to good governance. This approach has been described as 'a mandatory constitutional canon of statutory and Constitutional interpretation'. The duty to adopt an interpretation that conforms to Article 259 is mandatory. Constitutional provisions must be construed purposively and in a contextual manner. Courts are constrained by the language used. Courts may not impose a meaning that the text is not reasonably capable of bearing. In other words, interpretation should not be 'unduly strained.' It should avoid 'excessive peering at the language to be interpreted. Articles 132(2)(d) and 155 of the Constitution must therefore not be applied and/or interpreted in isolation from other provisions and more so Article 236 which assures public officers of certain protections.'

29. He also cited the case of Juma Okumu V Cabinet Secretary Ministry of Lands and Physical Planning and Public Service Commission and another [2021] eKLR where the Court held that;

' To ignore these serious allegations and seek to promote the 1st Interested Party before they are resolved would fly in the face of Chapter 6 of the Constitution and Section 34(2) of the Public Service Act. For avoidance of doubt, the observation by the Court in the above regard does not affect the status of the 1st interested party and the position she may be holding in public service. However, unless the allegations are resolved in her favour, they remain reasonable impediment to her being recommended for elevation or appointment to another public office. In conclusion the Court hereby declares that, In view of the unresolved issues touching on the 1st Interested Party involvement in fraud and corruption in respect of



property known as LR No 3586/3 she is unfit to hold the position of Director of Surveys in any Capacity.'

30. On whether the Petition is merited, the Petitioner submitted that the 1st Respondent has violated the Constitution and blatantly disobeyed Court Orders, therefore unfit to hold public Office. He argued that the Petition is merited and should be allowed as prayed.

Respondent's and 1st interested party's Submissions.

31. The parties herein submitted on two issues; whether the Petitioner has exhausted all other remedies available and whether the Court has jurisdiction to hear and determine the issues raised in this Petition.

32. On the first issue, it was submitted that the Petitioner has not exhausted all remedies available to him before invoking the jurisdiction of this Court. It was argued that Article 152 (5)-(10) of the Constitution has given elaborate procedure on the removal of a cabinet Secretary while Article 119 of the Constitution has empowered members of the public to petition the National assembly to kick start the process of the said removal, therefore that the Petitioner ought to have exhausted these procedures and in case of difficulties raised the same before Court. To support its argument, they relied on the case of Geoffrey Muthiga Kabiru & 2 others V Samuel Munga Henry & 1756 others [2015] eKLR where the Court held that; -

' It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.'

33. With regard to allegation of breach of Articles 10, 73 and 73 of the Constitution together with section 52 of the Leadership and integrity Act, it was argued that such issue are ordinarily within the Purview of the 1st Interested party to enforce not the Petitioner as provided for under Section 4(2) of the Leadership and Integrity Act.

34. On the jurisdiction of this Court to hear and determine the issues raised in the Petition, it was submitted that jurisdiction in everything and without it the Court must down its tool as was held in the locus classicus case of Owners of motor vessel Lillian 'S'. It is argued that the issue of jurisdiction is so determinative that it can be raised at any stage of the proceedings. To support this, they cited the Court of appeal case of Jamal Salim V Yusuf Abdullahi Abdi and another Civil Appeal Number 103 of 2016/ 2018] eKLR where the Court held that;

' Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in Adero & Another vs Ulinzi Sacco Society Limited [2002] 1 KLR 577, as follows; That Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction. Jurisdiction is such an important matter that it can be raised at any stage of the proceedings even on appeal.'



35. On the source of a Court's jurisdiction, the Supreme Court of Kenya in [*Constitutional Application No 2 of 2011 In the Matter of Interim Independent Electoral Commission \(2011\) eKLR*](#) held that: -

' Assumption of jurisdiction by Courts in Kenya is a subject regulated by the [*Constitution*](#), by statute law, and by principles laid down in judicial precedent 30. Later, in Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR 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. We agree with counsels for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings where the [*Constitution*](#) exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the [*Constitution*](#). Where the [*Constitution*](#) confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a Court or tribunal by statute law.'

36. In view of the above, the Respondents submitted that the Petitioner has prematurely invoked the jurisdiction of this Court and failed to follow the procedure provided by the [*Constitution*](#) on the removal of cabinet secretary as such the Petition is not merited and should be struck out since this Court lack jurisdiction.

1st Respondent's Constitution.

37. The 1st Respondent submission were on the whether this Court has jurisdiction and whether the Petitioner has meet the threshold for the removal of a cabinet secretary.

38. On the first issue, it was submitted that this Court is granted jurisdiction by Article 162(2) of the [*Constitution*](#) as read with Section 12 of the Employment and Labour Relations Act, which jurisdiction is limited to hearing and determining disputes arising from employment relationships, trade unions, trade unions organizations and employers' organizations.

39. Consequently, that having been appointed by the president as the Cabinet secretary, with the approval of the National assembly, the dispute raised herein falls outside the ambits of this Court and this Court cannot arrogate itself jurisdiction no matter the circumstances. In this she relied on the case of [*Samuel Kamau Macharia and another V Kenya Commercial Bank and 2 others, Application number 2 of 2011\[2012\] eKLR*](#) where the Court held that;

' 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. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where



the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a Court or tribunal by statute law.'

40. She further submitted that, where the law prescribes a method for settlement of disputes outside the Court, such mechanism ought to be exhausted before a jurisdiction of Court is invoked as was held in Speakers of National Assembly V Karume Civil Application No Nai 92 of 1992 and the case of Republic V Benjamin Jomo Washiali, Majority Chief Whip, National Assembly and 4 others Ex parte Alfred Kiptoo Keter and 3 others [2018] eKLR. Where the Court relied on the case of Narok County Council vs Trans Mara County Council & Another Civil Appeal No 25 of 2000, and expressed itself as follows:

' Although section 60 of the Constitution gives the High Court unlimited jurisdiction, it cannot be understood to mean that it can be used to clothe the High Court with jurisdiction to deal with matters which a statute has directed should be done by a minister as part of his statutory duty; it is otherwise where the statute is silent on what is to be done in the event of a disagreement. Where the statute provides that in case of a dispute the Minister is to give direction, the jurisdiction of the Court can be invoked only if the Minister refuses to give a direction or in purporting to do so, arrives at a decision which is grossly unfair or perverse. In the latter, his decision can be challenged by an application to the High Court for a writ of certiorari because under the relevant section the decision is to be made on a fair basis. But if the Minister simply refuses to discharge his statutory duty, his refusal can also be challenged in the High Court by way of mandamus to compel the Minister to perform his statutory duty but not by way of a suit. If the Court acts without jurisdiction, the proceedings are a nullity. The extent of the jurisdiction of the High Court may not only, be that which is conferred or limited by the Constitution but also, that which the Constitution or any other law, may by express provisions or by necessary implication, so confer or limit. The jurisdiction of the High Court can be ousted by an Act of Parliament and in such cases all that the High Court can do is to enforce by judicial review proceedings, the implementation of the provisions of the Act; certainly not, to usurp the powers of the Minister. Even though resort to the judicial review process, may in appropriate cases not be a bar to other proceedings such as a plaint, this may not apply in peculiar circumstances such as this one, so as to entitle the Judge to do not only what he was not requested to do, but also, to do what he had no jurisdiction to embark upon. Where the law provides for procedure to be followed, the parties are bound to follow the procedure provided by the law before the parties can resort to a Court of law as the Court would have no jurisdiction to entertain the dispute'.

41. It is argued that it is only in circumstances, where the applicant is faced with difficulties in the enforcement of the alternative dispute resolution mechanism that it can approach the Court and while doing so, must demonstrate to the Court the nature of difficulty experienced.
42. On whether the Petitioner has met the threshold for granting of the relief sought, the 1st Respondent submitted that, for a cabinet secretary to be removed from office, the complainant has to demonstrate that the cabinet secretary is engaged inter alia with gross violation of the Constitution, which was not



established in this case. To support her case, she relied on the case of *Martin Nyaga Wambora & 3 others V Speaker of the Senate and 6 others [2014] eKLR* where the Court held that;

' As observed herein not each violation of the Constitution may amount to gross-violation. Consequently, the motion to remove a Governor from office and particulars of the charge must expressly state that the alleged violation is gross and give particulars of the alleged gross violation. We are minded to draw analogy in this Court's decisions in criminal cases involving robbery with violence where it was stated where the charge against the accused person involves an allegation that the weapon used was offensive and dangerous. In the instant case, it is our view that if violation of the Constitution is alleged to be gross, the motion and charges against the Governor must expressly indicate the words 'gross violation' in the charge and the specific particulars of the alleged gross violation must be given. The rationale for this is that where the violation is not gross, then the removal process under Article 181 of the Constitution is not available. In the instant case, the word 'gross' was omitted from the charges levelled against the Governor. A Governor is entitled to notice and particulars of the charges facing him and notice as to whether the allegation is merely an allegation of violation of the Constitution or other law or gross violation of the Constitution and other law.'

43. In conclusion, the 1st Respondent submitted that the Petitioner has not meet the threshold for her removal and therefore the Petition should be dismissed with costs.
44. I have examined all averments and submissions of the parties herein. The main contention by the Petitioner is that the 1st Respondent has violated the provision of Chapter 10 of the Constitution of Court by her conduct of disobeying Court orders in various counts and is therefore unfit to hold any public office.
45. The Petitioner prayed that this Court makes orders that the 1st Respondent is unfit to hold office of Cabinet Secretary and any other public office in Kenya.
46. The Respondents have raised a preliminary objection in this petition which raises the issue of this Court's jurisdiction to handle this petition.
47. In view of this preliminary objection and the holding of the Court in the Locus Clasicus of Lilian 'S' I will first deal with the matter raised before making any other determination.
48. As raised by the Respondent, the AG and the 1st Interested Party, they aver that the 1st Respondent being an appointee of the President pursuant to Article 152 of the Constitution, she can only serve at the President's pleasure and cannot therefore be removed from office by this Court.
49. Article 152 (5) and 152 (6) of the Constitution of Kenya provides as follows;
 - (5) The President—
 - (a) May re-assign a Cabinet Secretary;
 - (b) May dismiss a Cabinet Secretary; and
 - (c) Shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).
 - (a) May re-assign a Cabinet Secretary;
 - (b) May dismiss a Cabinet Secretary; and



(c) Shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).

(6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—

(a) On the ground of a gross violation of a provision of this Constitution or of any other law;

(b) Where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) For gross misconduct.

(a) On the ground of a gross violation of a provision of this Constitution or of any other law;

(b) Where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or

(c) For gross misconduct.

50. Indeed Article 152 (5) of the Constitution provides for a process and mode of which Cabinet Secretaries can be dismissed from office upon gross violation of the Constitution.

51. Under Article 152 (6) – a member of the National Assembly is clothed with jurisdiction supported by at least ¼ of all MPs to propose a motion for the removal of a Cabinet Secretary.

52. In this Court's view, though the 1st Respondent has been found guilty of disobedience of Court order and has even been subjected to contempt proceedings, her removal can only be initiated whilst following proper procedure wherein Parliament can act and pass a motion for her removal.

53. This Court indeed has jurisdiction to handle employment and labour relations matters but the removal of Cabinet Secretaries is one specifically vested upon Parliament and the President of Kenya and this Court cannot usurp such jurisdiction.

54. It is my finding therefore that preliminary objection raises substantial issues on jurisdiction which I find I don't have.

55. In the circumstances the only recourse I have is to down my tools and go no further.

56. I find the entire petition collapses on that account and is therefore dismissed accordingly.

57. There will be no order of costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF SEPTEMBER, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Otwal for Petitioner – present

Barasa for 1st Respondent – present



No appearance for other parties

Court Assistant – Fred

