



**Sheria Mtaani na Shadrack Wambui v Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development & 2 others; Ndirangu & another (Interested Parties)
(Petition 95 of 2022) [2022] KEELRC 13340 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13340 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 95 OF 2022
J RIKA, J
NOVEMBER 30, 2022
(FORMERLY NAIROBI HIGH COURT PETITION NUMBER 220 OF 2022)**

BETWEEN

SHERIA MTAANI NA SHADRACK WAMBUI PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF TRANSPORT, INFRASTRUCTURE,
HOUSING AND URBAN DEVELOPMENT' 1ST RESPONDENT**

KENYA NATIONAL HIGHWAYS AUTHORITY 2ND RESPONDENT

ATTORNEY-GENERAL 3RD RESPONDENT

AND

WANGAI NDIRANGU INTERESTED PARTY

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND
TECHNOLOGY INTERESTED PARTY**

RULING

1. This petition was transferred by the High Court to the ELRC, through an order issued by Hon LJ Ong'undi, on May 19, 2022.
2. The High Court ruled that, "this is an employment and labour related matter."
3. The 1st interested party has filed a notice of preliminary objection, which is supported by the 2nd respondent. They object, that the ELRC does not have jurisdiction to hear and determine the petition. The interested party argues secondly, that the petitioner does not have *locus standi* to present the petition.



4. Parties agreed that the objection is considered on the strength of their submissions, confirmed to have been filed and served, at the last court appearance on October 6, 2022.

The Court Finds:-

5. The preliminary objection is a little bit disturbing.
6. The parties were before the high court, which declared that it does not have jurisdiction, and that jurisdiction lies with the ELRC.
7. The petition was transferred by the High Court to the ELRC, on that ground.
8. Parties did not challenge the order of the High Court. The order has not been stayed, and there is no review or appeal, against the order, brought to the attention of the ELRC. The ELRC has assumed jurisdiction after the High Court declined jurisdiction.
9. Instead of challenging the order made by the High Court, the 1st interested party and the 2nd respondent have approached the ELRC, asking the court to decline jurisdiction. Where is the petition to be heard, if not either in the High Court or the ELRC? The preliminary objection if sustained, would usher in anarchy and judicial disorder, and completely ravage the concept of the rule of law.
10. The interested party submits at length, that the correct jurisdiction is the High Court, and that the petitioner chose to file the petition at the ELRC, which lacks jurisdiction to even transfer the petition to the competent jurisdiction. In their view, the 1st interested party and the 2nd respondent, the petition ought to just collapse, and the issues in dispute remain unresolved. This sort of submission is shocking, considering that the parties are freshly from the High Court, which transferred the petition, just a few months before the preliminary objection was mounted.
11. In effect, the 1st interested party and the 2nd respondent are asking this court to overturn the order made by the High Court. This court does not sit on appeal, or review against decisions of the High Court.
12. On *locus standi*, the 1st interested party submits that the petitioner has failed to demonstrate capacity under article 22 of the Constitution. This objection has no merit.
13. The petitioner explains that it is a non-governmental organization, involved in protection of constitutionalism and the rule of law. The 2nd respondent is a state corporation. the petition challenges the appointment of the 1st interested party as a member of the board of the 2nd respondent, on the ground that at the time of his appointment, the 1st interested party was employed by the 2nd interested party in its civil engineering department.
14. The petitioner has the *locus standi*, under article 22 of the Constitution, to present this petition. The subject matter is constitutionalism and the rule of law, with respect to governance of a public body. Any member of the public would have capacity under the Constitution, in a matter involving the governance of a state corporation.

It Is Ordered: -

- a. The preliminary objection is declined
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30TH DAY OF NOVEMBER 2022.



James Rika

Judge

