



**Nyandusi v Independent Electoral and Boundaries Commission & 2 others
(Petition E025 of 2022) [2022] KEELRC 13342 (KLR) (1 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13342 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E025 OF 2022
CN BAARI, J
DECEMBER 1, 2022**

BETWEEN

MOTTANYA CHARLES NYANDUSI PETITIONER

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

SAMSON MWACHA OKIOMA 3RD RESPONDENT

RULING

1. Before Court is a Preliminary Objection raised by the 1st Respondent dated June 16, 2022, and filed in court on June 21, 2022. The 1st Respondent contends that this court does not have jurisdiction to hear and determine matters touching on election disputes, and hence the petition herein is an abuse of the process of the court, and ought to be struck out with cost.
2. The Petitioner did not respond to the Preliminary Objection, and neither did he or his Advocates attend court on the hearing date despite service.
3. The Objection was urged on November 2, 2022, where Counsel for the 1st Respondent argued that the application and petition in this matter, has been overtaken by events as the Petitioner was through the petition, seeking clearance to run for elective office.
4. The 1st Respondent through Counsel further argues that this court has limited jurisdiction per Article 162 of the *Constitution*, which is to hear matters that relate to employment and not election disputes, hence this court lacks jurisdiction to entertain the application and the petition herein.



Determination

5. The Petitioner herein, under his application and petition, sought amongst others, a Conservatory orders restraining the 1st Respondent from barring his registration and/or clearance as Deputy Governor candidate for Nyamira County under the Jubilee Party ticket, and an order compelling the 1st Respondent to admit him as a candidate for Deputy Governor in Nyamira County.
6. The 1st Respondent's objection to the application and petition, is based on the argument that this court lacks jurisdiction to entertain election disputes.
7. John Beecroft Saunders in "*Words and Phrases Legally Defined*", Volume 3 at Page 113 defines court jurisdiction as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the 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. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

8. Further, Nyarangi, JA in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 Stated thus:

“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. Article 162 of the *Constitution* provides for the establishment of the Employment and Labour Relations Court, and further spells out the jurisdiction of the court in the following words:-

“162 (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2)

2. Parliament shall establish courts with the status of the High Court to hear and determine dispute relating to
 - a. employment and labour relations; and
 - b. the environment and the use and occupation of, and title to land.
3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”



10. Pursuant to the provisions of Article 162(2) of the *Constitution*, Parliament enacted the *Employment and Labour Relations Court Act*, 2011, which goes on to spell out the jurisdiction of the Court in its Section 12 (1).
11. The Court of Appeal in *Public Service Commission & 4 others v Cheruiyot & 20 others* (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) opined thus: -

“In the absence of an employee-employer relationship, it is our considered view that the court that had jurisdiction to entertain and determine the issues raised in the consolidated petitions was in fact the High Court. The establishment of the High Court is found at article 165(1) of the *Constitution*. Under article 165(3), the High Court has jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been violated, infringed or threatened. Under article 165(d)(i), the High Court has jurisdiction to determine whether any law is inconsistent with or in contravention of the *Constitution*.”
12. The Petition and application herein, does not disclose an employer/employee relationship between the Petitioner and the Respondents. Further, the dispute between the parties is not one that falls within the ambit of Section 12 (1) of the *Employment and Labour Relations Court Act*.
13. I find and hold that this court lacks jurisdiction to entertain both the application and the petition in this suit.
14. In sum, the 1st Respondent’s Preliminary Objection succeeds, and the application and petition herein is struck out with costs to the 1st Respondent, as the 2nd and 3rd Respondents did not participate in the suit.
15. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 1ST DAY OF DECEMBER, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

N/A for the Petitioner

Mr. Okoth Oluoch present for the 1st Respondent

N/A for 2nd and 3rd Respondents

Ms. Christine Omollo-C/A

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