



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**PETITION NO. 29 OF 2020**

**IN THE MATTER OF: THE PRINCIPLE OF PUBLIC PARTICIPATION**

**AND**

**IN THE MATTER OF: ARTICLES 1(1) & (4), 2(1), 6(2), 10(1) & (2), 19(1), 20(1), 22(1) & (2), 23(1) & (3), 27(4), 33(1), 35(1),  
41(1), 232(1)(d), 258(1) & (2)(d) AND 259(1)(a) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: AGRICULTURE AND FOOD AUTHORITY ACT NO. 13 OF 2013**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: RULES 3(1), 4 AND 10 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF: RULE 7 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT  
(PROCEDURE) RULES, 2016**

**AND**

**IN THE MATTER OF: SECTIONS 4 AND 6 OF THE AGRICULTURE AND FOOD AUTHORITY**

**ACT NO. 13 OF 2013**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION**

**AND ALLIED WORKERS .....PETITIONER**

**v**

**CABINET SECRETARY, MINISTRY OF**

**AGRICULTURE, LIVESTOCK, FISHERIES AND**

COOPERATIVE DEVELOPMENT .....1<sup>st</sup> RESPONDENT

AGRICULTURE AND FOOD

AUTHORITY.....2<sup>nd</sup> RESPONDENT

COUNTY GOVERNMENT OF KISUMU..... 3<sup>rd</sup> RESPONDENT

OFFICE OF THE

HON ATTORNEY GENERAL .....4<sup>th</sup> RESPONDENT

**RULING NO. 2**

1. On 12 October 2020, the Court dismissed a Notice of Preliminary Objection which had challenged its jurisdiction over the dispute herein.
2. The Objection was anchored on the grounds that there was no employer and employee relationship between the Petitioner and the Respondents; the Petition did not raise any constitutional questions and that the subject matter of the dispute was not one of those contemplated by section 12 of the Employment and Labour Relations Court Act.
3. As a result of the dismissal of the Objection, this Court gave detailed directions on 2 November 2020 to be complied with by the parties ahead of Judgment on 21 January 2021.
4. On 9 November 2020, the 2<sup>nd</sup> Respondent filed a Motion under a certificate of urgency seeking orders:
  1. ...
  2. **THAT** pending the hearing and determination of the Applicant's intended Appeal there be a stay of all further proceedings herein.
  3. **THAT** the costs of this application be provided for.
5. Pursuant to Court directives on 17 November 2020, the following were filed
  - (i) Replying Affidavit by the Secretary-General of the Petitioner on 25 November 2020.
  - (ii) Submissions by 2<sup>nd</sup> Respondent on 30 November 2020.
  - (iii) Submissions by the Petitioner on 21 December 2020.
6. The Court has considered the Motion, affidavits and submissions.
7. It is not in doubt that the 2<sup>nd</sup> Respondent filed a Notice of Appeal against the Ruling of 12 October 2020 on 21 October 2020.
8. The Appeal is against a jurisdictional question, and jurisdiction is a foundational question. Without jurisdiction, a Court must of necessity down its pen.
9. In the case at hand, it would be an exercise in futility and waste of precious judicial time was this Court proceed to hear and determine the Petition on the merits and later on for the Court of Appeal to find and hold that this Court had no jurisdiction over the dispute in the first place.
10. Legal prudence, therefore, dictates that the instant Petition be stayed pending the hearing and determination by the Court of Appeal of the Appeal on the jurisdictional question.
11. The Court hereby orders
  - (i) **THAT** pending the hearing and determination of the 2<sup>nd</sup> Respondent's Appeal before the Court of Appeal, these proceedings stand stayed.
12. No order on costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 17<sup>th</sup> day of February 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Petitioner	P.D. Onyango & Co. Advocates
For 1 <sup>st</sup> and 4 <sup>th</sup> Respondents	Jane Lang'at, Deputy Chief Litigation Counsel, Office of the Attorney General
For 2 <sup>nd</sup> Respondent	Lubulellah & Associates
For 3 <sup>rd</sup> Respondent	did not participate
Court Assistant	Chrispo Aura