



**REPUBLIC OF KENYA**

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

**ELRC JUDICIAL REVIEW APPLICATION NO.E005 OF 2021**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CHAIRMAN, BOARD OF DIRECTORS NATIONAL**

**WATER HARVESTING AND STORAGE AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**BOARD OF DIRECTORS, NATIONAL WATER**

**HARVESTING AND STORAGE AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**SHARON OBONYO.....INTERESTED PARTY**

**DAVID NGURE KAIRU.....EX PARTE APPLICANT**

**RULING**

1. The Ex-parte Applicant instituted this proceeding on 5<sup>th</sup> May, 2021 seeking inter alia to quash the resolution of the 3<sup>rd</sup> special full board of the 2<sup>nd</sup> Respondent passed on 28<sup>th</sup> April, 2021 appointing the interested party as the acting chief executive officer and to bar the Respondents from acting on the resolution until this Judicial Review Application is heard and determined which orders were granted in the interim on 25<sup>th</sup> May, 2021.

2. On 28<sup>th</sup> May, 2021 the interested party made an application seeking to vary the interim ex-parte orders of this Court to exclude stay of implementation of the resolution passed by the 2<sup>nd</sup> Respondent on 28<sup>th</sup> April, 2021 while the 1<sup>st</sup> Respondent on the same day filed an application seeking to stay implementation of another resolution passed by the 4<sup>th</sup> special full board of the 2<sup>nd</sup> Respondent passed on the 27<sup>th</sup> May, 2021 and to stop the interested party from acting for the 2<sup>nd</sup> respondent till this application is determined.

3. While these applications were pending for hearing and determination the 2<sup>nd</sup> Respondent and the Interested party filed a Preliminary Objection on the 9<sup>th</sup> June, 2021 in response to the 1<sup>st</sup> Respondent Application of 28<sup>th</sup> May, 2021 through the firm of Muchemi and Company Advocates based on the following grounds:-

**1) That the 1<sup>st</sup> Respondent's Notice of Motion dated 28<sup>th</sup> May, 2021, herein is ex facie incompetent and an abuse of Court process in that the Notice of Motion dated 28<sup>th</sup> May, 2021 was filed without the mandatory resolution of the 2<sup>nd</sup> Respondent, contrary to section 11 of the 1<sup>st</sup> Schedule to the Water Act no. 43 of 2016 requiring and decision of the Board, be supported by a majority of the votes cast at a meeting of a board or committee at which quorum is present and the resolution shall be the decision of the Board Committee.**

**2) That in the circumstances the Court lacks the requisite jurisdiction to entertain the 1<sup>st</sup> Respondent Notice of Motion dated 28<sup>th</sup> May, 2021.**

4. The Attorney General acting for the 2<sup>nd</sup> Respondent also raised a Preliminary Objection on the 7<sup>th</sup> June, 2021 on the basis that:-

**This Court has no jurisdiction to hear this suit because the cause of action arose in Nairobi at the headquarter of the National water harvesting and storage Authority and not in Nakuru where the matter is filed.**

5. The parties agreed to proceed with the Preliminary Objection raised by the Attorney general, therefore this ruling is in respect of the said

Preliminary Objection raised on 7<sup>th</sup> June, 2021.

6. The preliminary objection was canvassed by way of written submissions with the 2<sup>nd</sup> Respondent filing on the 11<sup>th</sup> June, 2021 and the interested party filed on 20<sup>th</sup> August, 2021 while all the other parties did not file any submissions.

#### **2<sup>nd</sup> Respondent's Submissions.**

7. The 2<sup>nd</sup> Respondent in support of their Preliminary objection submitted that this Court lacks territorial jurisdiction to determine this case and urged the Court to down its tools as held in the celebrated case of **Owners of Motor vessel Lilian "S" –v- Caltex Motors limited [1989] ekr.**

8. It was argued that the issue in dispute is based on a resolution seeking to extend the employment contract of the acting CEO of the National Water Harvesting and storage Authority for a further 6 months which resolution was undertaken by the 2<sup>nd</sup> Respondent in their offices located at industrial area Dunga Road in Nairobi city County which territorial jurisdiction ought to have been Nairobi, Employment and Labour Relations Court.

9. He argued further that similar case was filed in Nairobi before this Court while sitting in Nairobi being **ELRC Petition number 116 of 2020 Abdi Mohamed Abdullahi –v- the Board National Water Harvesting and storage Authority, the Cabinet secretary water and the Hon Attorney General** which matter judgment was delivered but subject of an Appeal which is still ongoing. That it's based on this issue that the Respondent saw it fit to extend the contract of the acting CEO for a further 6 months as the issue of substantive CEO is determined in the Court of Appeal to allow smooth running of the 2<sup>nd</sup> Respondent in the interim.

10. The Respondent thus urged this Court to allow its preliminary Objection.

#### **Interested party's Submissions.**

11. In further support of the preliminary objection the interested party submitted that the cause of action herein arose in Nairobi as such the competent Court to hear and determine this Dispute ought to be the Employment and Labour Relations Court in Nairobi and not this Court.

12. I have examined the averments of the parties herein in relation to the Preliminary Objection. The applicants in the Preliminary Objection have raised the Preliminary Objection that this court lacks territorial jurisdiction to handle this matter because the respondents herein are based in Nairobi and therefore the ELRC sitting in Nakuru lacks jurisdiction to handle this matter.

13. I will tackle the issue of the territorial jurisdiction of the ELRC first.

14. Article 162 of the Constitution states as follows;

#### ***162. System of courts***

***(1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).***

***(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes 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).***

***(4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.***

15. Under article 162(2)(1) the ELRC as contemplated derives its jurisdiction and courts have already pronounced themselves on the fact that the ELRC is a court of the same status as the High Court in disputes relating to Employment and Labour Relations.

16. In **Trusted Society of Human Rights Alliance vs Nakuru Water & Sanitation Services Company & The AG – Nakuru Pet 5/2013**, the learned Judge held as follows;

***“That in mapping out the boundaries to determine jurisdiction, the court shall consider the four crucial traditional elements of jurisdiction namely parties, territory on geographical area, remedies that may issue and subject matter in dispute.***

***That the authority to decide will relate to the parties, the territory on geographical area of the disputes, the remedies that may issue and the subject matter involved.***

***Depending on the authority to decide as may be conferred, all the four parameters may be pertinent on one or two of them may apply. In the opinion of the court unless any of the four results into a bar to jurisdiction in the given case or circumstance,***

*presence of any of the four as permitting jurisdiction will be sufficient for the court to assume jurisdiction and proceed to entertain and determine the case at hand.*

*It is given that constitutionally, this court exercises territorial jurisdiction throughout the Republic of Kenya”.*

17. J. Ruka in Kenya Maita Mwawashe VS Plan International Kenya Industrial Court of Kenya at Mombasa Case No. 5 of 2014 observed as follows;

*“(4) There is no requirement under the Industrial Court Act and the Industrial Court (Procedure) Rules 2010 for filing of employment and labour disputes in the geographical jurisdictions, where they are deemed to arise...”*

18. The ELRC is a court with the status of the High Court which has unlimited original and appellate jurisdiction to handle matters in any part of Kenya. The court has no limit in its geographical jurisdiction. It is therefore not true as submitted by the applicants that this court lacks geographical jurisdiction to handle this application because the respondent’s applicants are headquartered in Nairobi.

19. Indeed the applicants are even now being represented by the AG and therefore it is fallacious to assume that only the ELRC Nairobi can handle this application.

20. I find the application not merited and I dismiss the Preliminary Objection accordingly.

21. That at it may be however I find that I had handled issues similar to what have been raised in the current application.

22. I would therefore in the same vain recuse myself from further handling this application and refer it to my colleague within Nakuru for further directions of the main application.

**RULING DELIVERED VIRTUALLY THIS 12TH DAY OF OCTOBER, 2021.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

No appearance for parties

Court Assistant - Fred