



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 210 OF 2019**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ARTICLES 3(1), 35(2) & 232 OF THE CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ARTICLES 2, 3, 19, 20, 22 & 23 OF THE CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF: SECTIONS 4, 4(2), 4(3), 5, 5(3), 7, 9(1), 9(6) & 28  
OF THE ACCESS TO INFORMATION ACT NO. 31 OF 2016.**

**AND**

**IN THE MATTER OF: SECTIONS 10, 10(1), 10(3) OF THE PUBLIC SERVICE  
(VALUES AND PRINCIPLES) ACT.**

**BETWEEN**

**JOSEPH MAKORI.....PETITIONER**

**v**

**KENYA MEDICAL RESEARCH INSTITUTE.....RESPONDENT**

**AND**

**DR. EVANS AMUKOYE.....1<sup>st</sup> INTERESTED PARTY**

**DR. ELIZABETH ECHOKA..... 2<sup>nd</sup> INTERESTED PARTY**

**DR. LUNA KAMAU.....3<sup>rd</sup> INTERESTED PARTY**

**PROF. ELIJAH SONGOK.....4<sup>th</sup> INTERESTED PARTY**

**DR. JOEL LUTOMIA.....5<sup>th</sup> INTERESTED PARTY**

**DR. WILLY SANG.....6<sup>th</sup> INTERESTED PARTY**

**DR. KIZITO LUBANO.....7<sup>th</sup> INTERESTED PARTY**

**DR. ZIPORAH BUKUNIA.....8<sup>th</sup> INTERESTED PARTY**

**DR. MORRIS NJOMO.....9<sup>th</sup> INTERESTED PARTY**

**MR. PATRICK GITAU..... 10<sup>th</sup> INTERESTED PARTY**

**DR. YERI KOMBE.....11<sup>th</sup> INTERESTED PARTY**

### **RULING**

1. On 3 October 2019, the firm of Okoth & Co. Advocates acting on behalf of Joseph Makori (Petitioner) wrote to the Director, Kenya Medical Research Institute (KEMRI) seeking to be furnished with information and documents related to the appointments of the Interested Parties to various offices within KEMRI.
2. The Petitioner's advocate indicated that the request had been made pursuant to Article 35(1) of the Constitution and other operative laws and asked that the information be served within 14 days.
3. KEMRI did not respond to the request and on 7 November 2019, the Petitioner filed a Petition contending that KEMRI had violated the law in appointing the Interested Parties to certain positions established under a new organisation structure.
4. Filed together with the Petition was a motion under a certificate of urgency seeking orders compelling KEMRI to release the information/documents sought through the letter of 3 October 2019.
5. Upon service of the Petition and Motion, KEMRI and the Interested Parties filed a Preliminary Objection contending that
  1. This Honourable Court does not have jurisdiction to entertain this suit in accordance with Article 162(2)(a) and (3) of the Constitution of Kenya 2010 as read together with section 12(1) of the Employment & Labour Relations Court Act No. 20 of 2011 and section 5 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya.
6. On 9 December 2019, the Petitioner proposed that the Preliminary Objection be determined on the basis of submissions to be filed.
7. The Court, therefore, directed that submissions be filed and the Respondent and Interested Parties filed their submissions on 28 January 2020 (should have been filed before 27 December 2019) while the Petitioner filed his submissions on 18 February 2020 (should have been filed before 21 January 2020).
8. The Court has considered the submissions and authorities cited even if they are not expressly discussed in this Ruling (Ruling could not be delivered on 21 February 2020 as the Court did not sit on that day).
9. The Petition raises two main questions and these are the alleged violation of the right to access information by KEMRI and alleged violations of the values and principles of the public service in the appointment of the Interested Parties to various offices within KEMRI.

### **Jurisdiction**

10. A Court can only assume jurisdiction granted or allowed to it by the Constitution or law.
11. The jurisdiction of this Court flows from Article 162(2) & (3) of the Constitution as read with the section 12 of the Employment and Labour Relations Court Act, and any other written law vesting the Court with jurisdiction.
12. The Petitioner did not dispute that he was not in an employment relationship with KEMRI.
13. The dispute advanced by the Petitioner appears to be underpinned by contractual relationships between KEMRI and the Interested Parties. The Petitioner has alleged violation of the values and principles which apply to the *public service* as contemplated by Article 232 of the Constitution.
14. Those are disputes contemplated within the meaning of section 87 of the Employment Act, 2007, and any aggrieved party may move the Court, hence the Court has jurisdiction.
15. The second issue raised in the Petition was the alleged failure by KEMRI to supply the Petitioner with information on the appointment process of the Interested Parties to senior positions.
16. On the face of it, the information sought by the Petitioner relates to employment/contractual relationships and it would be legally imprudent to institute legal proceedings in different Courts to first obtain relevant information before commencing action.
17. The Court is in the circumstances of the view that it has the requisite jurisdiction to hear and determine the dispute as it is not only the

direct parties to an employment relationship who have access to the Court.

18. The Preliminary Objection is struck out.

19. Each party to bear own costs for filing submissions late.

**Delivered, dated and signed in Nairobi on this 10<sup>th</sup> day of March 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner Okoth & Co. Advocates

For Respondent/Interested Parties Humphrey & Co. LLP Advocates

Court Assistant Judy Maina