



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 260 OF 2017

SAMUEL KIHURUNJO MWANGI.....CLAIMANT

VERSUS

THE SPEAKER,

MURANG'A COUNTY ASSEMBLY.....1ST RESPONDENT

MURANG'A COUNTY ASSEMBLY.....2ND RESPONDENT

RULING

1. The Respondents raised a preliminary objection to the effect that this court has no jurisdiction to try the claim as the Claimant was never an employee of the 2nd Respondent but an elected member of the County Assembly (MCA) and that his claim lies in the law courts at Murang'a. Parties consented to dispose of the preliminary objection by way of submissions. The Respondents submitted that under statute the court did not have jurisdiction to hear the claim as the Claimant was not an employee as defined under Section 2 of the Employment Act. The Respondents submitted that the Claimant held office by virtue of Article 177(1)(a) of the Constitution of Kenya as an elected member of the county assembly of Murang'a. The Respondents submitted that the claim before the court had no basis given the determination in Murang'a High Court Petition No. 14 of 2017 which had declared the office of deputy speaker as null and void. The Respondents submit that there is no legal basis to claim a salary but concede that the Claimant is entitled to retain the sums he earned between January 2018 and June 2018 as the office was then lawfully held. The Respondents submit that there was therefore no need to hear the entire suit as there was nothing in dispute.

2. The Claimant submitted that any duties or assignments allocated to a member of the county assembly upon assuming office are engagements unrelated to the voter and that in such assignments the Member is an employee of the respective county assembly. He submitted that it follows therefore that he was an employee of the Murang'a County Assembly in his duties of the County Assembly Deputy Speaker. He cited the case of **Amos Muthui Muchiri v The County Assembly of Nyeri & 3 Others [2019] eKLR** where the court held that the office of deputy speaker is not unconstitutional. The Claimant submitted that the preliminary objection is devoid of merit and ought to be dismissed. He cited Article 178(2)(b) of the Constitution of Kenya and submitted that the Constitution contemplates the office of deputy speaker of the County Assembly. He submits that the action taken by the Respondents of abolishing the office of the Deputy Speaker Murang'a County was malicious and ill advised.

3. A preliminary objection is raised at the earliest opportunity. In the case of **The Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited (1989) KLR 1** Nyarangi JA famously 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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".

Similarly in the case of **Owners and Masters of The Motor Vessel "Joey" v Owners and Masters of The Motor Tugs "Barbara" and "Steve B" [2008] 1 EA 367** the Court of Appeal expressed itself as follows:-

"The question of jurisdiction is a threshold issue and must be determined by a judge at the threshold stage, using such evidence as may be placed before him by the parties. It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything and 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. It is for that reason that a question of jurisdiction once raised by a party or by a

court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined. There is no reason why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”

4. The issue raised before me therefore fits within the paradigm of a preliminary objection on jurisdiction. The Respondents assert that I do not have jurisdiction as the Claimant was not an employee of the Respondents. Article 178 of the Constitution provides as follows:-

178.(1) Each county assembly shall have a speaker elected by the county assembly from among persons who are not members of the assembly.

(2) A sitting of the county assembly shall be presided over by—

(a) the speaker of the assembly; or

(b) in the absence of the speaker, another member of the assembly elected by the assembly.

(3) Parliament shall enact legislation providing for the election and removal from office of speakers of the county assemblies.

5. The instructive aspect of Article 178(2)(b) is that in the absence of the speaker, the sitting of a county assembly shall be presided over by another member of the assembly elected by the assembly. It is crystal clear that though the Constitution expressly provides for a speaker and a deputy speaker elected by the assembly who is to chair the sittings of the county assembly in the absence of the speaker, such a deputy is elected. As an elected official of the County Assembly, the Claimant is therefore not an employee in terms of Section 2 of the Employment Act. As such any dispute he may have to do with the position is not a matter for this Court. Article 162(2) of the Constitution delineates the jurisdiction of the court I am presiding over to be employment and labour relations. The Deputy Speaker of Murang'a County not being an employee within the meaning of the Employment Act cannot seek redress before this court for the abolition of his office or the non-payment of his allowance. He is not even paid a salary as he clearly asserts in his plea to court. The preliminary objection is merited and I strike out the suit but make no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 18th day of June 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar