



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 100 OF 2016**

*(Before D. K. N. Marete)*

DANIEL KIPKOECH KENDUIYWO.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF UASIN GISHU.....RESPONDENT

**RULING**

This is an application by way of Preliminary Objection dated 19th January, 2017. It is grounded as follows;

- 1. The Honourable Court has no jurisdiction to entertain and determine the claim there being no employment relationship between the parties herein. The jurisdiction of this Honourable Court is by law pegged on existence of an employment relationship between the claimant and the respondent.*
- 2. The claim is fatally defective for non-disclosure of a reasonable cause of action against the County Government of Uasin Gishu who is the sole respondent in the matter. The matter is thus further bad for misjoinder.*

This matter was heard *ex-parte* on the 15th February, 2017, there having been no appearance for the claimant. Counsel for the respondent, Mr. Kenei at the hearing submitted that the jurisdiction of this court is pegged on an employer/employee relationship as espoused by S. 12 of the Employment and Labour Relations Act, 2014. It was his further submission that in the circumstances of this case this relationship does not subsist as the claimant is seeking absorption with the respondent. She opines and further submits that she is not an employer as this is the province of the County Public Service Board.

She therefore prays that the Preliminary Objection be allowed and the suit be dismissed with costs.

The claimant in his Memorandum of Claim dated 9th May, 2016 avers that he is an employee of the respondent. He details the particulars of employment as originating from his secondment to the respondent with effect from 1st January, 2014 in accordance with the constitution and law of the land. The respondent disputes an employment relationship and prays that this court lacks jurisdiction by virtue of a non-existence of an employer/employee relationship. I differ.

The issue of the jurisdiction of this court has been ably set out in various post constitution authorities in this court and elsewhere. It is settled law that jurisdiction in this case is not confined to merely employer/employee relationships as many would like to imagine. It would never have been anybody's intention to create a court as limited and bound as one dealing with only employer/employee relationships. This is clear from a literal interpretation of the Constitution and the Employment and Labour Relations Court Act, 2014.

The above is illustrated in the authority of **Trusted Society of Human Rights Alliance vs Nakuru Water and Sanitation Services Company & Another (2013) Eklr** where Ongaya, J. elaborately observed as follows;

*The court has considered the provision and finds that under the section, parties to the proceedings before the court are not limited to those in an employee-employer relationship. In particular, under section 12(2) of the Act, any person can bring before the court a case against an employer, employee, a trade union, an employer's organization, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law. The court finds that the court has jurisdiction under section 12 (2) because the petitioner not being in an employer-employee relationship with the respondent, the respondent has been moved against in its capacity as an employer. As relates to jurisdiction by subject matter, Article 162(2)(a) of the Constitution and section 12(1) of are elaborate that jurisdiction attaches to this court with respect to disputes relating to employment and labour relations. In the instant case, the dispute is about a recruitment process undertaken by the respondent. The court finds that recruitment is a proper element of employment and therefore the court has jurisdiction in view of that subject matter. As for jurisdiction based on remedy, the court finds that the petitioner has substantially prayed for declarations which are remedies the court is authorized to make under section 12(3)(iv) of the Act. Thus, the court has jurisdiction on that account. Further, on jurisdiction by subject matter, the court holds that it is vested with constitutional jurisdiction to protect the Constitution under Article 258 and to enforce the Bill of Rights in disputes relating to employment and labour relations pursuant to provisions of Article 22(3) as read with Article 23 and 165(3)(b) of the Constitution. Thus, Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and procedure Rules, 2013 " High Court" means the High Court of Kenya established by Article 165 of the Constitution and includes courts with the status of a High Court established under Article 162(2) of the Constitution.*

This is further buttressed by the authority of **Republic v Clerk County Assembly of Baringo ex parte William Kassait Kamket (2015) eKLR**, where my brother, Radido, J. rightly considered and addressed the issue as follows;

*Article 162 of the Constitution did not envisage a Court Limited or restricted to dealing with disputes arising out of a contract of service as defined in the Employment Act, 2007 which in any case predates the Constitution. The primary statute granting this Court universal jurisdiction is the Employment and Labour Relations Court Act (previously the Industrial Court Act). The most relevant provision is located in section 12 of the Act. And in granting the Court its jurisdiction, Parliament faithfully observed the command of the Constitution by using the phrase disputes relating to employment and labour relations. The jurisdiction granted included disputes relating to or arising out of employment between an employer and an employee and not only in respect of contract of service as a reading of the Employment Act, 2007 may suggest. And in my view, the use of the term including in section 12 is significant as it helps to construe the jurisdiction of the Court over the present proceedings flow from application of Article 162 of the Constitution in establishing a specialist Court to deal with employment and labour relations disputes. The jurisdiction of the Court over the present proceedings flow from application of Article 162 of the Constitution and section 12(1)(a) of the Employment and Labour Relations Court Act rather than from an interpretation of the provisions of the employment Act, 2007. The definition of employer, employee and contract of service in the Employment Act, 2007, in my view, is not meant to limit or restrict the jurisdiction granted to the Court by section 12 of the Employment and Labour Relations Court Act, office holders are employees who have access to this Court and where a speaker alleges*

*improprieties in the removal process that is a dispute relating to and arising out of employment. It matters not that they are employees or servants of the people or the respective Commissions or County Assemblies.*

Further, in the authority of *Naqvi Syed Qmar v Paramount Bank Limited & another (2015) eKLR*, Rika J. at Paragraphs 34 and 35 ably and eloquently observed as follows:

*The 2nd Respondent admits the jurisdiction of the Employment and Labour Relations Court, to hear and determine all the aspects of the dispute. The 1st Respondent concedes the jurisdiction of the Court in dealing with the claim for unfair and unlawful termination, but denies that the Court has jurisdiction to deal with defamation and malicious prosecution. This argument is based on Section 12 of the Employment and Labour Relations Court Act. The 1st Respondent's view is that Section 12 restricts the Court to disputes between Employers and Employees. Such disputes are confined to the contract of employment. Torts of defamation and malicious prosecution cannot be dealt with by this Court.*

*The 1st Respondent's view narrows the jurisdiction of the Court while both the Constitution of Kenya, and the Employment and Labour Relations Court Act, broaden the jurisdiction. Article 162(2)(a) of the Constitution which contemplates the creation of this Court, defines the material jurisdiction of the Court to include all disputes relating to employment and labour relations. The Article does not say contractual disputes, between Employers and Employees; it states all disputes relating to employment and Labour Relations Court Act refers to Article 162(2)(a) of the Constitution and " the provisions of this Act, or any other written law which extends jurisdiction to the Court relating to employment and labour relations including..." In the case of *Hakika Transporters Services Limited v. Kenya Long Distance Truck Drivers and Allied Workers Union(2015)e-KLR*, the Court held the view that section 12 is inclusive. It is not an exclusive list of the dos and don'ts of this Court. The court has assumed jurisdiction and determined claims for employment related defamation and malicious prosecution in *Beatrice Achieng Osir v. Board of Trustees Teleposta Pension Scheme (see Claimant's Submissions for citation)*, *George Onyango Akuti v. G4S Security Services Limited (2013) e-KLR*. The jurisdiction of this Court extends to all disputes relating to employment and labour relations. Personal Jurisdiction is no longer confined to Employers and Employees as was the case under the Trade Dispute Act Cap 234, but to all persons implicated in an employment and labour relations dispute.*

We therefore need not belabour on this.

As observed from the authorities above cited this court derives its jurisdiction from the constitution and the Employment and Labour Relations Court Act, 2014. Articles 162(2)(a), 165(5)(b) and Section 12 of the Employment and Labour Relations Court Act *inter alia*, refer. It will take time to establish a settled position on the law relating to jurisdiction of this court. It is however now agreeable that the court has jurisdiction to deal with all issues relating to Employment and Labour Relations and is not necessary confined to employer/employee matters. Besides, in the instant case, the clear contest as expressed in the Memorandum of Claim touches on this subject.

I am therefore inclined to dismiss the preliminary objection with orders that each party bears their own costs of the same.

**Delivered, dated and signed this 21<sup>st</sup> day of February 2017.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Oboso holding brief for Mr. Wasika instructed by E. Wafula & Associates Advocates for the

Claimant.

2. Mr. Kenei instructed by Gumbo & Associates Advocates for the Respondent.