



**Republic v Attorney General & 3 others; Chege (Exparte Applicant)  
 (Judicial Review Miscellaneous Application E142 of 2023)  
 [2025] KEHC 9231 (KLR) (Judicial Review) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9231 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 JUDICIAL REVIEW  
 JUDICIAL REVIEW MISCELLANEOUS APPLICATION E142 OF 2023**

**JM CHIGITI, J  
 JUNE 27, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
 ETHICS AND ANTI-CORRUPTION COMMISSION ..... 2<sup>ND</sup> RESPONDENT  
 THE CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE .... 3<sup>RD</sup> RESPONDENT  
 KENYA RURAL ROADS AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**ESTHER WANJIRU CHEGE ..... EXPARTE APPLICANT**

**RULING**

1. The Exparte Applicant herein filed an application dated 19<sup>th</sup> December 2023 seeking the following orders against the Respondents;
  - i. That the Applicant be granted leave for an order of certiorari to remove and quash the decision to suspend the Applicant from work for twelve (12) months.
  - ii. That the Applicant be granted leave to apply for an order of prohibition prohibiting the Respondents from further enforcement or making of the decision to suspend, dismiss, remove from office and subjecting her to disciplinary action without due process of the law.



2. In responding to the application, the 1<sup>st</sup> respondent filed a Notice of Preliminary Objection dated 6<sup>th</sup> February 2024 that forms the subject for determination. It raises the following grounds:
  1. That this Court lacks jurisdiction to entertain this matter.
  2. That the Ex parte Applicant being aggrieved by the decision of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein, ought to seek for redress in the Employment and Labour Relations Court as provided for in Article 162 (2) (a) of *the Constitution* of Kenya, 2010.
  3. That *the Constitution* of Kenya creates a special court that deals with employment and labour matters specifically.
  4. That the Ex parte Applicant has not attached any decisions of the said court in her application to show that she was dissatisfied with the court's decision contrary to Order 53 Rule 7(1) of the Civil Procedure Rules, 2010.
  5. That this suit has been brought to this court in clear disregard of the provisions of the law and is an abuse of the due process of the Court.
  6. That the same should be struck out and or dismissed with cost to the Ex parte applicant.
3. It is the Respondent's case that Article 162 (2) (a) of *the Constitution* provides that:
 

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

  - (a) employment and labour relations;”

Pursuant to Article 162 (2) (a), Parliament passed the *Employment and Labour Relations Court Act*, which in addition to establishing the court, sets out the jurisdiction of the court.”
4. It is further its case that Section 12 of The *Employment and Labour Relations Court Act* provides that;
 

“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) 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—

  - (a) disputes relating to or arising out of employment between an employer and an employee...”
5. On the question of Jurisdiction reliance is placed in the landmark case of Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Limited [1989] eKLR and the case of Samuel KamauMacharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR where it was held as follows: -
 

“A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits.



It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law...”

6. On what amounts to a Preliminary objection it places reliance in the Mukisa Biscuit Manufacturing Company Ltd v West end Distributors Ltd 1969 EA 696.

#### **The Ex-Parte Applicant's case;**

7. It is her case that on 16<sup>th</sup> November 2023, the statehouse spokesperson, Mr. Hussein Mohammed issued a press release under the aegis of the Executive Office of the President on a directive given by the Chief of Staff and Head of Public Service on terms that the 3<sup>rd</sup> Respondent; “has directed the suspension of six Chief Executive Officers for alleged involvement in corruption and procurement irregularities within their respective institutions .It is her case that he additionally directed the suspension of 67 police officers and an accountant at the Kenya Rural Roads Authority (KeRRA).”
8. Consequently, the Ex-Parte Applicant, an accountant at the Kenya Rural Roads Authority (hereafter referred to as "KeRRA"), was suspended on the recommendation of the Ethics and Anti-corruption to the 4<sup>th</sup> Respondent vide a letter dated 10<sup>th</sup> November 2023.
9. It is her case that Article 165(3)(d)(ii) of *the Constitution* confers jurisdiction upon the High Court to hear any question respecting the interpretation of *the Constitution* which includes the determination of “the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution.”
10. The Ex-Parte Applicant’s case is predicated on “Section 42(7) of the *Leadership and Integrity Act* which stipulates that;  
  
“Subject to *the Constitution* and any regulations for the enforcement of the Code made under this Act, a State officer may be suspended from office pending the investigation and determination of allegations made against that State officer where such suspension is considered necessary.  
  
She also relies on Article 236 of *the Constitution* which provides that a public officer shall not be —  
  
(a) Victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or  
  
(b) Dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”
11. It is the Ex-Parte Applicant's submission that based on the violations of *the constitution* cited the scope of review is beyond the employer-employee relationship and decidedly calls for inquiry into the constitutionality of the actions by the 2<sup>nd</sup> 3<sup>rd</sup> and Respondents including the communication by the 3<sup>rd</sup> Respondent and letter by the 2<sup>nd</sup> Respondent in light of the mandatory terms of Article 260(b) of *the Constitution*.
12. Reliance is placed in The Court of Appeal judgment in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others 120131 e KLR. In urging the court to dismiss the preliminary objection dated 12<sup>th</sup> April 2023.



13. Its further her case that the principles on preliminary objections were laid out in the Supreme Court in the case of Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others [2014] eKLR where it quoted with approval the case of Mukhisa Biscuit Manufacturing Co Lt v West End Distributors (1969) EA 696 as follows:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

14. Its her case that the Preliminary Objection lacks merit as it fails to appreciate the scope of the Ex-Parte Applicant's pleadings which relate to constitutionality of the directive dated 16<sup>th</sup> November 2023 by the 3<sup>rd</sup> Respondent and letter by the 2<sup>nd</sup> Respondent recommending the suspension of the Ex-Parte Applicant, an inquiry which is well within the purview of this Honourable Court.
15. Additionally, there is a recognizable public law wrong that calls for remedy properly exercisable by this Honourable Court in its supervisory jurisdiction (see Republic v Cabinet Secretary, Ministry of Education & another; Wamoto (Exparte Applicant) (Judicial Review 3 of 2023) (2024] KEELRC 106 (KLR) (31 January 2024) (Judgment)).

#### **Analysis and Determination:**

16. A preliminary objection must be on a point of law. The Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:

“....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

At page 701 paragraph B-C Sir Charles Newbold, P. added the following:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion....”

17. I am satisfied that the Notice of Preliminary raises questions of jurisdiction which is a point of Law.
18. The question of jurisdiction is well established in the locus classicus, Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd where the Court pronounced itself as such:

“I think 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.



19. In the case of Lydia Nyambura Mbugua vs. Diamond Trust Bank Kenya Limited & Another it was held that:
- “...what is important when determining whether the court has jurisdiction, is not so much the purpose of the transaction, but the subject matter or issue before court, for I think that the purpose of the transaction, may at times be different from the issue or subject matter before court That is why I hold the view, that in making a choice of which court to appear before, one needs to find out what the predominant issue in his case is, and not necessarily, the predominant purpose of the transaction...”
20. The Exparte Applicant’s case is that that on 16<sup>th</sup> November 2023, the statehouse spokesperson, Mr. Hussein Mohammed issued a press release under the aegis of the Executive Office of the President on a directive given by the Chief of Staff and Head of Public Service on terms that the 3<sup>rd</sup> Respondent; “has directed the suspension of six Chief Executive Officers for alleged involvement in corruption and procurement irregularities within their respective institutions and that hes additionally directed the suspension of 67 police officers and an accountant at the Kenya Rural Roads Authority (KeRRA).”
21. She argues that she was an accountant at the Kenya Rural Roads Authority (hereafter referred to as ‘KeRRA’), who was suspended on the recommendation of the Ethics and Anti-corruption to the 4<sup>th</sup> Respondent vide a letter dated 10<sup>th</sup> November 2023.
22. These are matters in the domain of an employment relationship that do not fit into the judicial review court.
23. The court with competent jurisdiction to listen to this matter is the Employment and Labour Relations Court. Article 162(2) and (3) of *the Constitution* of Kenya, 2010 provides as follows: -
- “ (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
- (a) Employment and labour relations....
- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”
24. Its jurisdiction the Employment and Labour Relations Court is as provided under Section 12 (1)(a)
- “The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) 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 -
- (a) disputes relating to or arising out of employment between an employer and an employee.”
25. The court has the jurisdiction to issue the prerogative orders alike the one the Applicant is pursuing herein.
26. In the case of Republic v Karisa Chengo & 2 others [2017] eKLR in which it upheld this Court's decision that a Judge of the specialized courts of Environment & Land (ELC) and Employment & Labour Relations (ELRC) have no jurisdiction to hear and determine matters reserved for the High



Court and vice versa. After extensive analysis of the law, the appointment and swearing in of Judges, the apex Court held:

“It follows from the above analysis that, although the High Court and the specialized Courts are of the same status, as stated, they are different Courts. It also follows that the Judges appointed to those Courts exercise varying jurisdictions, depending upon the particular Courts to which they were appointed. From a reading of the statutes regulating the specialized Courts, it is a logical inference, in our view, that their jurisdictions are limited to the matters provided for in those statutes. Such an inference is reinforced by and flows from Article 165(5) of *the Constitution*, which prohibits the High Court from exercising jurisdiction in respect of matters “reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or (b) falling within the jurisdiction of the Courts contemplated in Article 162(2)”.

27. It is my finding and I so hold that the issues as raised in the suit herein gives rise to an employer employee relationship which is within the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC). This court has no jurisdiction.

**Disposition;**

28. The Notice of preliminary objection is meritorious. This court lacks jurisdiction.

Order;

1. The Notice of Preliminary Objection dated 6<sup>th</sup> February 2024 is upheld.
2. The suit is hereby transferred to the Employment and labour relations court (ELRC) for hearing and determination.
3. Costs to the Respondents

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2024.**

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**J. CHIGITI (SC)**

**JUDGE**

