



**Lukindo v County Assembly of Taita Taveta & 2 others (Constitutional  
Petition E005 of 2023) [2024] KEHC 6825 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 6825 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CONSTITUTIONAL PETITION E005 OF 2023**

**GMA DULU, J**

**APRIL 23, 2024**

**BETWEEN**

**RICHARD MAIMBO LUKINDO ..... APPLICANT**

**AND**

**COUNTY ASSEMBLY OF TAITA TAVETA ..... 1<sup>ST</sup> RESPONDENT**

**GOVERNOR OF TAITA TAVETA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**TAITA TAVETA COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Petition and Notice of Motion both dated 20<sup>th</sup> July 2023, were filed on the same date, by the petitioner Richard Maimbo Lukindo through counsel Gichuki Thiaka & Company Advocates, challenging actions taken and intended to be taken by the respondents.
2. The petitioner/applicant herein being an employee of the County Government of Taita Taveta, as Political Advisor of the Governor, was in June 2023 served with a letter to appear before the Tourism Committee of the County Assembly (1<sup>st</sup> respondent) to explain matters relating to allegations against him in the performance of duty and was questioned and one of the recommendations of the committee was for him to be removed from office as Political Advisor to the County Governor, which recommendations were adopted by the County Assembly on 18<sup>th</sup> July 2023.
3. He thus filed proceedings through the present Constitutional Petition seeking orders as follows:-
  - a. A declaration as unlawful, null and void the report of the Tourism Committee of Taita Taveta County adopted by the County Assembly of Taita Taveta on the 18<sup>th</sup> July 2023 in so far as its recommendation relating to the removal of the petitioner as political advisor.



- b. A declaration as unlawful, null and void the resolution of the County Assembly of Taita Taveta passed on 18<sup>th</sup> July 2023 adopting the Tourism Committee report recommending the removal of the petitioner as political advisor.
  - c. An order prohibiting the 2<sup>nd</sup> and 3<sup>rd</sup> respondents from receiving, taking or conducting any step or complying with the resolution of County Assembly of Taita Taveta of 18<sup>th</sup> June (should be July) 2023 recommending removal of the petitioner as the political advisor to the Governor Taita Taveta County.
4. The petitioner simultaneously filed a Notice of Motion dated same date, seeking interim injunctive and conservatory orders.
  5. In response to the Petition and Notice of Motion, the 1<sup>st</sup> respondent the County Assembly filed Preliminary Objections through counsel Sharia Nyange Njuguna & Company Advocates in the following terms:-
    1. The court lacks requisite and necessary jurisdiction to hear and determine the motion dated 20<sup>th</sup> July 2023 together with the entire petition.
    2. The honorable court is devoid of jurisdiction pursuant to the express provisions of Article 165(3), 165(5) (6) & (7).
    3. The court is devoid of jurisdiction pursuant to the express provisions of Section 12(1) of the Employment & Labour Relations Court Act No. 20 of 2011.
    4. The court is devoid of jurisdiction pursuant to the express provisions of Section 87 of the Employment Act No. 11 of 2007.
    5. The entire suit is bad in law, incompetent, frivolous & vexatious and the same is otherwise an abuse of court process.
    6. This court ordered that the Preliminary Objection above be heard first and the same was canvassed through written submissions, and is the subject of the present ruling.
    7. The objections were canvassed through written submissions. I have perused and considered the submissions filed by Sharia Nyange Njuguna & Company Advocates for the 1<sup>st</sup> respondent as well as the submissions filed by Gichuki Thiaka & Company Advocates for the petitioner. I have to acknowledge that each side relied on decided court cases.
    8. This being a preliminary objection, it has to be weighed against what was stated in the case of Mukhisa Biscuits Manufacturing Company Ltd v West End Distributors Ltd [1969] EA 69. A proper preliminary objection has to be on a pure point of law, wherein all the facts have been agreed, which if decided upon, will determine the whole case or matter.
    9. In my view, jurisdiction being everything as was clearly stated in the case of Owners of Motor Vessel Lilian “S” v Caltex Oil Ltd [1989] KLR1, the issues of jurisdiction raised above objections by the 1<sup>st</sup> respondent constitute proper Preliminary Objections as, if I find that this court has no jurisdiction to entertain the matter, the matter will end there, as I will have to down my tools.
    10. The question that has to be determined now is whether this court has jurisdiction to entertain this matter. Jurisdiction of courts arises from the Constitution and written laws. The Kenyan law, has developed and evolved over time, and in 2010 Kenyans conferred on themselves a new constitutional dispensation.



11. In accordance with the new constitutional dispensation under Article 165(2) and Article 165(5)(b) of the Constitution, the jurisdiction to adjudicate on any employment and labour related matter was conferred upon and reserved for the newly created Employment and Labour Relations Court which is a court of equal status to the High Court. The jurisdiction of the High Court under the same Article 165 of the Constitution was circumvented not to cover employment and labour related matters.
12. Thus from then on, the High Court ceased to be the place or one of the places at which employment and labour related cases are to be handled, as there now exists a specialized forum for adjudicating such matters. The High Court is thus debarred from dealing with such matters and also has no supervisory or review jurisdiction over employment and labour relations matters.
13. Though I am aware that the petitioner has come to this court through a constitutional petition herein, his allegations being founded on violation of his rights with regard to proper or lawful procedure to be followed and sanctions in contracts of service or employment, which is governed by employment and labour relations laws, which laws in my view fully covers his rights and obligations, as well as his reliefs for wrongful acts done, and whose disputes can only be adjudicated on in the Employment & Labour Relations Court and not the High Court, this matter can only be handled in the proper court, as this court cannot entertain and adjudicate on this matter.
14. I thus find that this court is not the right or proper forum for the petitioner, as this court has no jurisdiction to adjudicate on the employment and labour relations matters brought by him before it herein, since there exists a special forum, established by the Constitution and the law to deal with such matters, to the exclusion of the High Court.
15. Consequently, I find and hold that the proceedings herein were instituted in the wrong forum which has no jurisdiction. I accordingly strike out the Petition herein and the accompanying Notice of Motion. I however order that each party will bear their respective costs of the proceedings as the relationship of the parties herein is employee/employer relationship.
16. Any interim orders issued by this court are hereby vacated.

**DATED, SIGNED AND DELIVERED THIS 23RD DAY OF APRIL 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

**Alfred – Court Assistant**

**Mr. Olwande holding brief for Mr. Thiaka for petitioner**

**Mrs. and Mr. Nyange for 1st respondent**

**No appearance for 2nd and 3rd respondents**

