



Anyanje v Chief Officer Public Service Board County Government of Kakamega & another; County Public Service Board County Government of Kakamega (Interested Party) (Cause E008 of 2025) [2025] KEELRC 2592 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2592 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E008 OF 2025
DN NDERITU, J
SEPTEMBER 29, 2025**

BETWEEN

DR. PURITY WANJIRU ANYANJE CLAIMANT

AND

**THE CHIEF OFFICER PUBLIC SERVICE BOARD COUNTY GOVERNMENT
OF KAKAMEGA 1ST RESPONDENT**

THE COUNTY GOVERNMENT OF KAKAMEGA 2ND RESPONDENT

AND

**THE COUNTY PUBLIC SERVICE BOARD COUNTY GOVERNMENT OF
KAKAMEGA INTERESTED PARTY**

RULING

I. Introduction

1. In a statement of claim dated 3rd February 2025 filed through Maobe Mukhwana & Co Advocates the claimant is seeking for the following reliefs –
 1. A declaration that the decision not to promote, appoint the claimant is unfair illegal and discriminatory.
 2. An order directing the 1st and 2nd respondent to immediately promote and appoint the claimant into the position Director Human Resource Management and Development Job Group CPSB 03/R.
 3. An order for immediate payment of the claimant's dues of Kshs124,630 (One Hundred and twenty-four, six Hundred and Thirty Thousand) Basic salary, House



Allowance Kshs35,000(Thirty-Five Thousand), Commuter Allowance of Kshs16,000 (Sixteen Thousand) and Annual Leave Allowance of Kshs10,000 (Ten Thousand) from 12th day of November 2024 when the said Agreement became due until the date the Appointment shall take effect and onwards.

4. An order for payment of costs of this suit with interest until payment in full.
 5. Any other relief deemed fit just and expedient by this court in the circumstances.
2. Upon service the respondents and the interested party through M/s Phoebe Munihi Muleshe & Co Advocates entered appearance and filed a notice of preliminary objection (PO) dated 21st March 2025 raising the following preliminary issue for determination by the court before the hearing of the cause –
1. The claim/proceedings which stems from the County Government Service violates Article 234 (2) (i) of *the Constitution*, Section 77 of the County Government Act and Section 86 and 87(2) of the *Public Service Commission Act* hence this court lacks jurisdiction to decide this matter. The respondents and interested party pray for dismissal of this claim with costs.
3. Further, the respondents and the interested party filed a response to the claim dated 16th April 2025 wherein the entire claim is denied in toto.
4. On 3rd April 2025 the court directed that the PO be heard first and that the same be canvassed by way of written submissions. Miss Munihi for the respondents and the interested party filed written submissions dated 16th April 2025 in support of the PO while Miss Mukhwana for the claimant opposed the PO in written submissions dated 24th April 2025.
5. After the above directions were issued the claimant filed an application dated 23rd May 2025 under certificate of urgency seeking for the following orders –
1. Spent.
 2. That service thereof be dispensed with in the 1st instance.
 3. That pending the hearing and determination of this application interpartes this honourable court be pleased to issue an order of injunction restraining the 1st respondent and the interested party County Public Service Board (Kakamega) County processing applications, proceeding with interviews, recruiting, hiring or appointing any persons to the position of Director Human Resource Management – Kakamega County.
 4. That upon interpartes hearing of this application the orders issued in (3) above be confirmed pending the hearing and final determination of this suit.
 5. That costs of this application be provided for in favour of the applicant.
6. When the application came up for inter partes hearing on 3rd June 2025 counsel for the respondents and the interested party informed the court that they were not opposed to the interim orders being granted pending the ruling on the PO. The interim orders were thus issued pending this ruling.

II. The Pleadings

7. In the statement of claim the claimant pleaded that she is an employee of the 2nd respondent currently serving as assistant director of human resources management and development officer serving in Job Group CPSB O5. That in July 2023 the interested party placed an external advertisement for the position of director of human resource management and development a position in Job Group CBSB 03/R.



8. The claimant applied for the vacancy and was shortlisted and interviewed. It is pleaded that the claimant was successful and that she was recommended by the interested party to the position via a letter dated 12th November 2024 which letter reached the 2nd respondent on 18th November 2024 (for the record, copies of the two letters are not filed in court).
9. However, the 2nd respondent did not communicate the appointment to the claimant and as such she has not been appointed to the position to date notwithstanding that she has written to the 2nd respondent seeking clarification for the delay. It is pleaded that the claimant has established that since the recommendation for her appointment the 2nd respondent has instead appointed an acting director of human resource management and development, the very position for which she was recommended for appointment. It is further pleaded that no explanation or clarification has been given on the delay in the claimant's appointment or for the appointment of the other person in acting capacity.
10. It is further pleaded that on 29th November 2024 the 1st respondent addressed to the interested party that the claimant was by then 59yrs old and hence about to retire mandatorily at 60. It is the claimant's pleading that the said communication was malicious and discriminatory infringing on the rights of the claimant to fair labour practices.
11. The respondents and the interested party in their response to the foregoing pleaded that while the claimant was shortlisted for the interview alluded to in the statement of claim, she was neither successful nor recommended for appointment to the vacant position. It is further pleaded, but without prejudice to the foregoing, that the claimant did not meet all the minimum qualifications for the vacancy as the engagement was to be contractual for a period of three years for which the claimant could not complete without overshooting her retirement age.
12. It is further pleaded that no new person has been appointed to the vacant position in acting capacity as the person acting was acting before the vacancy was advertised and serving in acting capacity is provided for in the law.
13. It is pleaded that the claim offends Section 77 of the County Governments Act, Article 234(2) of the Constitution, and Sections 86 & 87 of the Public Service Commission Act. It is pleaded that the claim is bad in law and discloses no cause of action.
14. It is upon the foregoing background that the PO was filed for determination on the grounds reproduced above.

III. Submissions By Counsel

15. In support of the PO counsel for the respondents and the interested party submitted that the claimant is guilty of violation of the doctrine of exhaustion for bypassing and or ignoring Section 77 of the County Governments Act and Section 87(2) of the Public Service Commission Act. It is submitted that in that regard this court lacks jurisdiction to entertain the claim.
16. It is further submitted that the issues raised in the claim lie within the exclusive jurisdiction of the Public Service Commission under Article 234(2) of the Constitution. It is argued that this position is fortified by the enabling provisions in Section 77 of the County Governments Act.
17. Citing the Court of Appeal in Geoffrey Muthinji & Another V Samuel Njuguna Henry & 1756 Others (2015) eKLR it is submitted that where an alternative system or method of dispute resolution is provided for a party shall exhaust that system or method before approaching a court of law. Further, citing Secretary County Service Board & Another V Hulbhai Gedi Abdille (2017) eKLR by the Court of Appeal counsel submitted that Section 77 of the County Governments Act is obligatory to all and



sundry before they approach the court to exhaust the alternative mechanism provided therein. The court is further reminded of its own decision in Samuel Mwangi Maina V County Government of Nakuru (2024) eKLR on the same issue.

18. For the claimant it is submitted that the subject matter of this cause is not a decision by the interested party but rather the failure by the respondents to implement the decision of the interested party. It is thus submitted that the subject matter does not lie within the ambit of Section 77 of the County Governments Act. Likewise, it is submitted that the subject matter of the dispute is not subject to Sections 86 and 87 of the Public Service Commission Act.
19. It is submitted that in view of the above the Board has been joined as an interested party rather than as a principal offending party and hence no reliefs are sought or complaints made against it.
20. It is submitted that this court has jurisdiction to hear and determine the dispute under Section 12 of the Employment and Labour Relations Court and Article 165(2) of the Constitution.
21. The court is urged to dismiss the PO and order that the cause be heard on merits.

IV. Issues & Determination

22. In the considered view of the court there is only one main issue for determination – Does the PO raised by the respondents have merits?
23. The court has read and re-read the claim as filed by the claimant. In the court’s understanding, the claimant’s case is that she was interviewed and recommended by the interested party for the appointment to the impugned vacancy. However, no evidence has been availed for the alleged recommendation of the claimant for the appointment. It is also important to note that the claimant remains an employee of the 2nd respondent in the position of assistant director of human resource management and development officer. It is for this position that there exists an employer-employee relationship between the claimant and the 2nd respondent.
24. In the foregoing context, and as a matter of fact and law, there exists no employment relationship between the claimant and the 2nd respondent in regard to the impugned vacancy of the director of human resource management and development. In the circumstances, going by the decision of the Court of Appeal in *The Clerk Nakuru County Assembly & 2 Others V Kenneth Odongo & 7 Others* (2022) eKLR, this court lacks jurisdiction to entertain the matter by virtue of Section 77 of the County Governments Act and Sections 85, 86, & 87 of the Public Service Commission Act.
25. The foregoing statutory provisions derive their validity and relevance from Article 234 of the Constitution. It is only upon exhausting the procedure provided for therein that the claimant may approach the court.
26. The jurisdiction of any court is either derived from the Constitution, statutes, or judicial precedents – see the Supreme Court decision in *Samuel Kamau Macharia & Another V Kenya Commercial Bank & Another* (2012) eKLR.
27. It is the finding and holding of this court that the PO as raised by the respondent has merits and meets the threshold set in *Mukhisa Biscuits Manufacturing Ltd V West End Distributors* (1969) EA.
28. This court (ELRC) is established under Article 162 of the Constitution and its jurisdiction expounded in Section 12 of the Employment and Labour Relations Court Act. It is the finding and holding of the court that the issue(s) raised by the claimant are without the purview and the jurisdiction of this court as per the law established.



29. The matters raised in the PO are purely matters of law that need no adduction of evidence or further investigation. On the basis of the points of law raised in the PO and, further, upon reading the submissions by counsel for both parties on the PO the court must down its tools for lack of jurisdiction.
30. The court has said enough in demonstrating that the PO by the respondents has merits and shall succeed. Subsequently, the claim herein is hereby struck out for the claimant has abused the doctrine of exhaustion for not invoking the jurisdiction of the Public Service Commission before approaching the court and hence the claim is in abuse and violation of the court process.

IV. Orders

31. The court makes the following orders –
 - a. The preliminary objection by the respondents based on the notice dated 21st March 2025 has merits and the same is hereby allowed.
 - b. Consequently, the cause by the claimant is hereby struck out for the reasons stated in the foregoing paragraphs of this ruling.
 - c. No order on costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER, 2025.

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DAVID NDERITU

JUDGE

