

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT KISUMU

JUDICIAL REVIEW NO. E013 OF 2025

(Before Hon. Justice Dr. Jacob Gakeri)

JAMES

OYENGO

ATANDI.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF KISII.....

RESPONDENT

RULING

Before the Court for determination is the *Ex Parte* Applicant's Chamber Summons dated 30th June, 2025 filed under Certificate of Urgency seeking Orders that:

1. *Spent.*
2. *The applicant be granted leave to apply for the following orders of Judicial Review.*
 - (a) *An Order of mandamus be issued against the Respondents compelling them to pay the ex parte applicant salary and allowances arrears of Kshs.1,284,960.00*
 - (b) *An Order in the nature of prohibition directed at the respondents prohibiting them from further*

withholding the ex parte applicant's salaries and allowances.

3. The costs of this application be in the cause.

The Chamber Summons is expressed under Articles 28, 41, 48, 159(2)(a) and (b) 258 and 259 of the Constitution of Kenya, 2010 and Sections 3 and 3A of the Civil Procedure Act and Order 53 Rule 1 and 2 of the Civil Procedure Rules and is based on the grounds set out in the statutory statement and the applicant's affidavit sworn on 30th June, 2025.

The applicant deposes that he was an employee of the 1st respondent on permanent and pensionable terms and served as a Ward Administrator prior to 1st July, 2022 and was promoted by the Kisii County Public Service Board to Assistant Director Administration Job Group N vide letter dated 4th August, 2022 and his salary rose to Kshs.87,360, house allowance to Kshs.28,000 and commuter allowance to Kshs.12,000 but the salary was not adjusted.

The applicant alleges violation of his labour rights.

In opposition to the Chamber Summons application, the respondents filed Grounds of Opposition dated 22nd July, 2025 citing non-disclosure of material facts by the applicant, the orders sought required a merit review suitable for a body with statutory authority to do so as opposed to the court, and the reliefs sought were not appropriate and the Chamber Summons was unmerited.

In their Replying Affidavit sworn by Earnest Osoro Rachami on 22nd July, 2025, the affiant deposes that the applicant was guilty of non-disclosure of material facts that the promotions effected by the County Public Service Board in July 2022 were not implemented owing to irregularities and a Petition was filed before the County Assembly for removal of the members of the County Public Service Board and the applicant's promotion was one of them and the new members of the Board resolved that the exercise be commenced a fresh and the exercise was on-going and the applicant was aware of these facts having been appointed in June 2020 and was not due for promotion in July 2022 as he had not served for 3 years, and was irregularly re-designated.

That because the promotions were not effected, the applicant's salary remained the same as was his job

group, and the same applied to all staff who had been promoted.

The affiant deposes that the applicant had not demonstrated inability on the part of the respondents as no demand letter was annexed to the affidavit by the applicant.

That these proceedings were an abuse of the court process.

Analysis

I have considered the Chamber Summons application, responses by the respondents and the applicant's submissions.

This is an application for leave to institute Judicial Review proceedings against the respondents for the Orders of *mandamus* and prohibition which may be granted after a merit review of the application.

The Chamber Summons is grounded on the provisions of Order 53 Rules (1) and (2) of the Civil Procedure Rules which expressly provide for leave to apply for an Order of *mandamus*, prohibition or *certiorari*. See in this regard,

IRC V National Federation of Self-employed and Small Business Ltd [1982] A.C. 617, Republic V Secretary of State for Environment Ex parte Greater London Council [1985] Time 30 December, O Relly V Mackman [1983] 2AC 286 at 294, Felix Kiprono Mategei V Attorney General LSK (Amicus Curie) [20211] eKLR, James Gacheru Kariuki and 22 Others V Kiambu County Assembly & 3 others, County Government of Nyeri V Cecilia Wangechi Ndungu [2015] eKLR among others.

The singular issue for determination is whether the *ex parte* applicant is entitled to the leave sought to institute judicial review proceedings against the respondent.

The applicant's case is that he was promoted but no salary adjustment was made pursuant to the promotion and was claiming the sum outstanding since 2022.

The respondent's case is that the promotions were found to have been conducted irregularly and were thus not effected and the process of promoting officers in the public service was underway and the Kisii County Public Service Board was at the tail end of considering the promotions a fresh.

However, the respondents provided no timeline including why it had taken over 2 years to reconsider the promotions.

Secondly, the respondents did not attach evidence of their invocation of the provisions of Section 75 of the County Governments Act which would typically include an investigation report pursuant to an investigation undertaken at the instigation of the County Public Service Board.

Be that as it may, the respondents main contention is that the applicant did not make a fully disclosure of material facts to the court as he was aware of the circumstances affecting his promotion and those of other members of staff of the County, which would explain the applicant's long delay in filing of the instant application, almost 3 years after the promotion.

The delay in filing the suit would appear to suggest that the applicant had some other undisclosed information about the promotions.

It is also noteworthy that the applicant has not attached a copy of any demand from his advocate since December, 2023.

Finally, whereas the applicant availed copies of the letter of promotion and redesignation with an enhanced salary and allowances, deployment and reporting to the assigned departments, the last of the letters dated 17th November, 2023 identified the applicant as an Assistant Director and the respondents tendered no verifiable evidence to substantiate their averments.

Finally, the respondents' submission that the Order of *mandamus* presuppose a determination after ascertainment of facts, though valid, cannot be the basis on which leave may be denied by a court.

This is because both parties have sufficient time to avail the evidence at their disposal in support of or in opposition to the substantive motion.

In the circumstances, leave is hereby granted to the applicant to institute Judicial Review proceedings against the respondents.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT
KISUMU ON THIS 29TH DAY OF SEPTEMBER, 2025**

**DR. JACOB GAKERI
JUDGE**

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate

just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI
JUDGE

ORIGINAL