



Mohammed v County Secretary, Nakuru & 3 others; Kiprono (Interested Party) (Employment and Labour Relations Petition E005 of 2025) [2025] KEELRC 2535 (KLR) (26 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2535 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS PETITION E005 OF 2025
J RIKA, J
SEPTEMBER 26, 2025**

BETWEEN

ABDULLAHI ADAN MOHAMMED PETITIONER

AND

THE COUNTY SECRETARY, NAKURU 1ST RESPONDENT

NAKURU COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

OFFICE OF THE COUNTY ATTORNEY, NAKURU COUNTY 3RD RESPONDENT

NYAROO JUSTICE MAYAKA 4TH RESPONDENT

AND

ROBERT KIPRONO INTERESTED PARTY

RULING

1. The Petitioner filed an application dated 7th April 2025, the subject matter of the Ruling herein.
2. He petitions the Court on his own behalf as a citizen, resident of Nakuru County, and on behalf of the general public.
3. The application is based on his affidavit, sworn on 7th April 2025.
4. The Petitioner explains that the Interested Party is the Director, Land and Physical Planning, Nakuru County.
5. The 1st Respondent, issued a circular dated 31st October 2023, establishing the office of Head of Physical Planning, and posted the 4th Respondent to that position.



6. The circular also posted the Interested Party as a Physical Planner, Kuresoi North and South.
7. Since then, the 4th Respondent has been signing documents and issuing communications, acting as Director of Physical Planning and Land Use. He is not qualified for the position, and the position is above his job description, within Nakuru County.
8. The Interested Party has been denied the opportunity to serve in the position he was appointed on merit to serve.
9. The decision by the Respondents amounts to demotion of the Interested Party, and unmerited promotion of the 4th Respondent.
10. The position of Director of Land and Physical Planning was competitively filled by the Interested Party.
11. The Petitioner applies for the following orders: -
 - a. Pending hearing and determination of the Petition, an order of temporary injunction is issued, restraining the 4th Respondent from exercising any duties, executing any documents and/ or issuing any communication on behalf of the County Director Land and Physical Planning.
 - b. Costs be provided for.
12. It is not clear why the Interested Party has approached the Court through the Petitioner. He filed what is referenced as a 'Replying Affidavit,' sworn by himself on 13th May 2025.
13. He does not explain why he could not approach the Court directly. He does not disclose any incapacity on his part, disabling him from pursuing this dispute, which is about his contract of employment, directly.
14. He explains however, that he was appointed as the Director of Lands and Physical Planning, Nakuru County, on 27th June 2014. He exhibits his letter of appointment.
15. He was recruited following an advertisement of a vacancy, placed in the Standard Newspaper, dated 21st November 2013.
16. He states that the function of lands and physical planning is regulated by the *Physical and Land Use Planning Act*, Cap 303 the Laws of Kenya.
17. He was surprised to receive a posting order dated 8th November 2023. There was no provision for a posting order in his employment contract, and he considered the posting order illegal.
18. He wrote to the 2nd Respondent on 6th November 2023, protesting the posting order. He informed the 2nd Respondent that his position was statutory and independent office. He also protested to the Chief Officer, Directorate of Land and Physical Planning.
19. His posting to Kuresoi as a Physical Planner, was not stayed.
20. His role as Director could not be delegated. He did not delegate, but was surprised to read documents signed by another officer, 'for' the Director.
21. He supports the application fully.
22. The Respondents rely on a Notice of Preliminary Objection, dated 24th April 2025.
23. They submit that the Court does not have jurisdiction to hear and determine the Application and the Petition, under Article 162 [2] of *the Constitution*.



24. The Petitioner has no capacity to file and prosecute the Application and the Petition.
25. The Petition is premature and in violation of Sections 77[2] of the County Governments Act, Cap 265 the Laws of Kenya and Section 87 of the Public Service Commission Act, Cap 185 the Laws of Kenya. The 4th Respondent has not exhausted the dispute resolution mechanisms provided for under the Law.
26. Parties agreed that the Application is heard and considered through written submissions. The submissions for the Respondents were received by the Court on 30th June 2025. The Petitioner undertook to file his submissions at the last mention before the Court on 1st July 2025, within 5 days.

The Court Finds: -

27. The Interested Party has not shown that he is incapacitated, to pursue this Petition in his own name.
28. The Petitioner has not established that he has the capacity to present the Petition on behalf of himself, the public and / or the Interested Party.
29. There is no foundation under the Constitution of Kenya, and The Constitution of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules, 2013, to sustain the Petition.
30. At the heart of the Petition is a contract of employment. The Interested Party has sworn an Affidavit, confirming that he was employed by the 2nd Respondent on 27th November 2014.
31. In dispute are contractual rights and obligations, between an Employer and Employee. There is no public interest at the heart of the Petition, but contractual interest, which calls on the parties to the contract to come forward, and enforce the contractual rights and obligations, instead of convoluting the dispute through 3rd parties, into a constitutional dispute.
32. When the dispute arose on 6th November 2023, the Interested Party sought remedy from the 2nd Respondent. He also sought the intervention of the Chief Officer, Directorate of Land and Physical Planning Nakuru County.
33. He took the responsibility himself, to protect his contractual rights.
34. Why should the Petitioner now come in, under the banner of public interest, 2 years after the Interested Party initiated the reclamation of his contractual rights, which are private to him?
35. The Petitioner Abdullahi Mohammed, is not privy to the contract of employment between the 2nd Respondent and the Interested Party, or indeed between the 2nd Respondent and the 4th Respondent. He cannot speak to the terms and conditions of service, contained in these contracts. He has no capacity to enforce either contract. He is not in a position to submit about promotion and demotion of the 4th Respondent or the Interested Party. He has not exhibited the 4th Respondent's contract. How is the Court to interfere with the terms of a contact it has not had the benefit of reading?
36. The Petitioner was not involved, when the Interested Party was issued a letter of appointment by the County Secretary and Head of Public Service, Nakuru County, dated 27th June 2014. The letter is marked 'confidential,' highlighting the private nature of the terms and conditions of service involved.
37. In his protest letter to the Chief Officer, dated 10th November 2023, the Interested Party invoked the County Governments Act. He also invoked the Public Service Commission Policies and Procedure Manual. He alludes to the right of Public Servants to appeal or seek review, against the decisions of their Employers, to the Public Service Commission.



38. Section 85 of the *Public Service Commission Act*, requires that Public Servants must first appeal a decision of their Employer to the Public Service Commission, before approaching this Court. The procedure for such appeal is laid down in Public Service [County Appeals Procedures], 2022.
39. Section 77 of the *County Governments Act*, requires Public Servants, or any other persons, such as the Petitioner herein, dissatisfied with a decision made by the Public Service Board, or a person exercising the control over the Public Servant, to appeal the decision to the Public Service Commission. The Commission is mandated to hear appeals on issues relating to employment of the involved Public Servant.
40. It is clear that interested Party, or his proxy the Petitioner herein, did not exhaust the grievance and dispute resolution mechanisms available to them, under the *Public Service Commission Act* and the *County Governments Act*.
41. While the E&LRC has jurisdiction on the matters in dispute, such jurisdiction can only be invoked after the primary mechanisms under the 2 Acts of Parliament above, have been exhausted. The Petition is in violation of the doctrine of exhaustion.

It is ordered: -

- a. The Preliminary Objection is sustained.
- b. The Petition and the Application are declined.
- c. No order on the costs.

DATED, SIGNED AND DELIVERED AT NAKURU ELECTRONICALLY, UNDER RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 26TH DAY OF SEPTEMBER 2025.

JAMES RIKA

JUDGE

