



REPUBLIC OF KENYA



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**Nyamu v Nairobi City County Government & 3 others (Employment and Labour Relations
Petition E045 of 2025) [2025] KEELRC 2478 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2478 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E045 OF 2025
HS WASILWA, J
SEPTEMBER 22, 2025**

BETWEEN

BONIFACE KARIMI NYAMU PETITIONER

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT

NAIROBI COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

ARTHUR JOHNSON SAKAJA 3RD RESPONDENT

**COUNTY SECRETARY, NAIROBI COUNTY GOVERNMENT 4TH
RESPONDENT**

RULING

1. In opposition to the subject Petition and Application herein, the Respondents filed a Notice of Preliminary Objection dated 7th April 2025 on the following grounds:
 1. That the jurisdiction of this Honorable Court has been improperly invoked for reasons that the Honorable Court lacks jurisdiction to hear and determine the dispute pursuant to section 85 of the *Public Service Commission Act*, 2017 and section 77 (2) of the County Government Act, 2012.
 2. That the Petition herein is fatally defective for failing to comply with the mandatory provisions of section 87 (2) of the *Public Service Commission Act*, 2017 which provides that: “A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.”
 3. That the Petition violates the doctrine of exhaustion, reiterated by the Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others*



Pet. 14A, 14B & 14C of 2014 of [2014] eKLR which requires that where a specific alternative dispute resolution mechanism is prescribed in law, parties must resort to that mechanism before invoking the court's jurisdiction.

4. That the Petition does not in any manner whatsoever disclose with precision and particularity any constitutional violations, as is legally mandatory, and thus gravely offends the principles laid down in various judicial decisions and principally, in the matter of Anarita Karimi Njeru v Republic [1979] eKLR as affirmed by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR;
5. That the Petition herein disregards various jurisprudential precedents laid down by this Court to wit:
 - i. Nyambane v County Government of Uasin Gishu (Cause E004 of 2024) [2024] KEELRC 1665 (KLR) (28 June 2024) (Ruling);
 - ii. Mobegi v County Secretary, County Government of Nyamira & 3 others (Petition E003 of 2025) [2025] KEELRC 1050 (KLR) (3 April 2025) (Ruling);
 - iii. Alfred Sifa Dena v Benjamin Kai Chilumo [2020] KEELRC 690 (KLR).
6. That the Petition herein has been filed in clear disregard of the law, is an abuse of the due process of court, hence cannot be countenanced and/or determined by this Honorable Court.

Submissions

2. The Respondents submitted on four issues: whether the Honorable Court has jurisdiction to hear and determine the Petition as drawn and filed; whether the Petition violates the doctrine of exhaustion; whether the Petition meets the threshold of a Constitutional Petition; and whether the Petition disregards various jurisprudential precedents.
3. On the first issue, the Respondents submitted that Section 77 of the County Governments Act provides that the Public Service Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of recruitment, selection, appointment and qualifications attached to any office and remuneration and terms and conditions of service.
4. The Respondents submitted that Section 85 of the Public Service Commission Act provides that the Commission shall, in order to discharge its mandate under Article 234 (2) (i) of the Constitution of Kenya, hear and determine appeals in respect of any decision relating to engagement of any person in a County Government, including a decision in respect of recruitment, selection, appointment and qualifications attached to any office and remuneration and terms and conditions of service.
5. They further submitted that Section 2 of the Public Service Commission Act defines "conditions of service" to mean any right or obligation relating to a public officer including appointment and removal.
6. It is therefore the Respondents' submission that a decision to remove a person from office and terminate the contract of employment by the County Service Public Board is one contemplated as "any decision relating to engagement of any person in a County Government" and "remuneration and terms and conditions of service" and is therefore appealable to the Public Service Commission. Therefore, this court lacks jurisdiction to hear and determine a dispute that relates to such a decision.
7. The Respondents submitted that this court lacks jurisdiction to hear and determine the Petition dated 25th March 2025 as drawn and filed and the Court should therefore down its tools on the matters held in the case of Owners of Motor Vessel "Lillian S# v. Caltex Oil (Kenya) Limited [1989] KLR 1.



8. On the second issue, the Respondents submitted that Section 87 (2) of the [Public Service Commission Act](#) provides that a person shall not file any legal proceedings in any court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this part has been exhausted. This provision is couched in mandatory terms to underscore the legislative intention that appeals from decisions or actions taken by the County Public Service Board or other persons be appealed against at the Public Service Commission.
9. The Respondents submitted that the petition dated 25th March 2025 revolves around a decision relating to engagement and removal from office of any person in a County Government thus an appeal from such a decision lies with the Public Service Commission. The Petitioner filed the petition without first invoking the jurisdiction of the Public Service Commission.
10. It is the Respondents' submissions that the Petitioner failed to exhaust the mechanisms provided under section 85 of the [Public Service Commission Act](#) and section 77 of the [County Governments Act](#). Therefore, the petition is fatally defective for failing to comply with the mandatory provisions of section 87 (2) of the [Public Service Commission Act](#) and the court cannot entertain the same.
11. On the third issue, the Respondents relied in Anarita Karimi Njeru v Republic [1979] eKLR as affirmed by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR the Court held as follows; "We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the [Constitution](#), it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."
12. It is the Respondents' submissions that the petition neither provided the provisions of the [Constitution](#) violated, the manner of alleged violation nor the jurisdictional basis of the action before the court. Therefore, the petition has not met the three-tier and falls short of the very substantive test that is the backbone of constitutional petitions and should therefore fall.
13. The Respondents submitted that Rule 11 Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides that the Petition filed under these Rules may be supported by an affidavit and if a party wishes to rely on any document, the document shall be annexed to the supporting affidavit or the Petition where there is no supporting affidavit. Additionally, Rule 10 (1) provides that an application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary. Form A requires that the Petition is signed by the Petitioner or their advocate. Meaning, they will be attesting to the correctness of the averments therein and the documents annexed and produced in support of the said averments.
14. It is the Respondents' submissions that the Petitioner opted to file a verifying affidavit, therefore, the petition is unsupported and not properly before this court. The Petitioner further filed a list of documents dated 25th March 2025 which documents are not annexed to the Petition and/or supporting affidavit contrary to Rule 9 of the Oaths and Statutory Declarations Rules requires that all exhibits to affidavits shall be securely sealed thereto under the seal of the commissioner and shall be marked with serial letters of identification.
15. The Respondents submitted that given that the documents are not annexed to a supporting affidavit and/or the Petition, the same are loose fly sheets and cannot be relied upon in support of the



petition and that marks the petition incomplete. Therefore, the allegations made in the Petition are unsubstantiated, unsupported and remains that.

16. They relied in Solomon Omwega Omache & Bosongo Medical Centre Limited v Zachary O Ayieko, Vincent K Ayieko & Lydia Bosibori Momanyi t/a Mainstream Welfare Association [2016] KEELRC 827 (KLR) wherein the Court quoted Abraham Mwangi –vs- S. O Omboo & Others HCCC No. 1511 of 2002 that held;

“Exhibits to affidavits which are loose fly sheets for identification attached to them and do not bear exhibit marks on them directly must be rejected. The danger is so great. These exhibits are therefore rejected and struck out from the record. That marks the affidavit incomplete and hence also rejected.”

Additionally, Sections 107, 108 and 109 of the Evidence Act which provides that he who alleges must proof.

17. On the final issue, the Respondents submitted that the High Court and the Court of appeal, has in several decisions determined that a dispute contemplated under section 77 of the County Governments Act as read together with section 85 of the Public Service Commission Act must first be raised with the Public Service Commission before seeking recourse in any other forum. They relied in Mobegi v County Secretary, County Government of Nyamira & 3 others [2025] KEELRC 1050 (KLR); Nyambane v County Government of Uasin Gishu [2024] KEELRC 1665 (KLR); and Alfred Sifa Dena v Benjamin Kai Chilumo [2020] KEELRC 690 (KLR).
18. The Respondents submitted that the petition was filed without first exhausting the appellate process established under section 77 of the County Governments Act as read together with section 85 of the Public Service Commission Act and was therefore filed in clear disregard various jurisprudential precedents.
19. It is the Respondents’ submissions that the petition has been filed in clear disregard of the law, is an abuse of the due process of the court, hence cannot be countenanced and/or determined by this court.

Petitioner’s Submissions

20. The Petitioner submitted that the instant case provided exceptional circumstances that allowed the Petitioner to approach the court in the first instance. The orders sought are intertwined to make this court the right forum as it has mixed jurisdiction as held Abdikadir Suleiman v County Government of Isiolo & another [2015] KEELRC 1522 (KLR). The Respondents in the main suit should also appreciate that the appeal process before the Public Service Commission does not deal with the procedural or legal propriety of the case which is the center stage in the Petitioner’s case.
21. It is the Petitioner’s submissions that he could not approach the Public Service Commission as termination of employment was done by a person without authority, was done without notice and without any hearing, thus he was denied material to initiate the appeals procedure. The legitimacy of the procedure as measured against the provisions of section 77 of the County Government Act is an issue of law and not appealable to the Public Service Commission.
22. The Petitioner submitted that that at the public Service Commission, what is appealable is the facts and the decision arrived at but not the issues of law and procedure.
23. The Petitioner submitted that section 77(1) of the County Government Act provides that any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public



Service Commission against the decision. Therefore, the law contemplates a disciplinary decision made by the County Public Service Board or a person delegated by the board in exercise of "disciplinary control" against any county public officer who may file an appeal to the Public Service Commission against the decision.

24. The Petitioner submitted that the instant suit is exceptional since he has never been a subject of any disciplinary proceeding before the County Public Service Board or its appointed committee and has never been served with any warning and was never issued with any notice and finally purportedly terminated by a person who had no such power or authority. Therefore, the Petitioner is before court on a question of law whether the 3rd Respondent has powers or authority to terminate his employment; this is a legal question that cannot be answered by the Public Service Commission.
25. The Petitioner submitted that Court of Appeal in addressing the provisions of section 77(2) in *Secretary, County Public Service Board & another v Hulbhai Gedi Abdille* [2017] eKLR held that:

“Although the Public Service Commission is the right forum for appeals from the County Public Service Board, the court can indeed discern exceptional circumstances that would warrant the bypassing of the statutory appellate process to the Public Service Commission.”
26. The Petitioner submitted that this court is the original adjudication forum as Article 162 (2) (a) and (3) as read with Article 165(5) and (6) of the *Constitution*, and Section 12 of the *Employment and Labour Relations Act*, 2011 and section 87 of the *Employment Act*, 2007 confer the court with original jurisdiction to hear and determine employment and labour relations disputes within the Republic of Kenya. Such jurisdiction is constitutional and statutory.
27. It is the Petitioner’s submissions that this court’s constitutional and statutory jurisdiction cannot be removed and conferred to a tribunal or other quasi-judicial body. It would be a serious error of the law for the Respondents to argue that the court has no jurisdiction, even in instances where the courts have ruled in favour of such preliminary objection, the court simply decline to take up the matters in the first instance but not due to lack of jurisdiction.
28. The Petitioner submitted that there is a deliberate application by Parliament of the word(s) may with regard to section 77(2) of the County Government Act. A reading of sections 77 (1) and (2) in whole is that where an employee is allowed internal disciplinary mechanisms by the employer such as the County Public Service Board, a decision is rendered and then the employee may invoke the appeal procedure with the Public Service Commission. The decision of the employer at the shop floor following application of internal disciplinary procedures is imperative.
29. It is the Petitioner’s submission that where any other person other than the employer, suo moto and without any written notice proceeds to purportedly terminate employment, such circumstances effectively removes the Petitioner from the shop floor and is left at liberty to urge his rights under the provisions of Article 162(2) (a) read together with section 12 of the *Employment and Labour Relations Court Act* and section 87 of the *Employment Act*. Even where the Petitioner may have wished to prefer an appeal, without the opportunity of a hearing at the shop floor in the first instance, the 3rd Respondent effectively denied the Petitioner the fair chance to argue any form of an appeal with the Public Service Commission.



30. The Petitioner submitted that a statute cannot oust the court jurisdiction conferred under and by the Constitution, therefore, this court has jurisdiction to hear and determine the dispute herein. He relied in *Abdikadir Suleiman versus County Government of Isiolo & another* [supra] that:
- “Section 77 of the County Government Act, 2012 does not oust or restrict the jurisdiction of the court for want of exhaustion of the procedure and remedies envisaged under the section? The original and unlimited jurisdiction to make a finding on legitimacy or lawfulness of decisions in disputes between employers and employees rests with the Employment and Labour Relations Court as vested with the appropriate jurisdiction under Articles 159(1), 162 (2)(a) as read with Article 165(5) and (6) of the Constitution; Articles 22(1) and 258(1) of the Constitution, and the provisions of the Employment and Labour Relations Act, 2011.”
31. The Petitioner submitted that the Public Service Commission Act refers to the procedure for review of a decision in respect of a, County Public Service board. Whereas the Constitution distinguishes between Public Officers and State Officers. State Officers are those holding positions of power and authority that are specifically mentioned in the Constitution like, President, Governors, MPS, MCAS etc., while Public Officers are those appointed either under the Public Service Commission or County Public Service Boards. Therefore, a Governor who is the sole author of the impugned back-dated letter of 28th February 2025 cannot under any circumstance fall under the category of County Public Service.
32. It is the Petitioner’s submission that all the precedents quoted by the Respondents are a misapplication of the law. The Respondents did not distinguish the facts of those precedents with the instant case. In all those cases, the Petitioners/Claimants had approached the court after a decision had been made by the respective County Public Service boards after full hearing. While in the instant case, it’s the 3rd Respondent decision that is impugned to be ultra vires as he had no authority or powers.
33. The Petitioner submitted that had he been dismissed by the County Public Service Board or a person acting on its behalf as lawfully contemplated by Section 77 (1) of the County Government Act, then, an appeal to the Public Service Commission would have been the forum through which the Petitioner could agitate his grievances at first instance because the jurisdiction thereof is a specialized one specifically tailored by the legislators to meet those needs.
34. The Petitioner submitted that his grievances are not actually against the 1st, 2nd and 4th Respondents but specifically against the 3rd Respondent. The only reason they have been enjoined is for purposes of efficient and economic disposal of this suit as per Order 1 Rule 3 of the Civil Procedure Act, which is pivotal to ensure that all necessary and proper parties are included in the suit to enable the court adjudicate effectively and economically. The 1st, 2nd and 4th Respondents are necessary parties without whom this suit cannot be effectively adjudicated since if a favorable judgment is entered, it would be ineffective.
35. It is the Petitioner’s submissions that what is impugned in the petition is not the decision of the County Public Service Board but the decision of the 3rd Respondent. The Petitioner contends that the termination letter issued to him on 28th February 2025 was a nullity since the 3rd Respondent acted ultra vires. The 3rd Respondent’s actions were an encroachment of the jurisdiction of the County Public Service board. Therefore, if the letter was a nullity as per the law, there was no decision to appeal against.
36. The Petitioner submitted that the Public Service Commission’s jurisdiction does not extend to hearing of appeals or reviewing the decisions of Governors who are not part of public service but state officers. Governors only make political appointments which are expressly exempted from being a subject of



Public Service Board under Article 234 (3) (d) which states that: "Clause (1) and (2) shall not apply to an office in the service of a county government except as contemplated in clause (2) N.

37. The Petitioner submitted that the County Government Act defines County Public Service as the collectivity of all individuals performing functions within any department of the County Government or its agency, but does not include the Governor, deputy Governor, members of the County Executive Committee and the members of the County Assembly. Therefore, in cases of disciplinary proceedings or even dismissal, the institution clothed with jurisdiction is the County Public Service Board and not the office of the Governor.
38. The Petitioner submitted that petition is precise, particularizes serious constitutional violation which will be proven at the time of full trial of the petition.
39. The Petitioner submitted that that the pleadings are in order, however, even if there was an oversight which is however denied, the Respondents are jumping the gun because the pleadings are not closed and incase the Petitioner finds its necessary to make adjustments, he will simply amend his pleading under Order 8 Rule 1 of the Civil Procedure Rules.
40. The Petitioner submitted that the Respondents are looking for every avenue to get the slightest of technicality so as to dislodge the Petitioner from the seat of justice. He urged the court to pay undue regard to procedural technicalities and prioritize fair and adequate administration of justice as enshrined under Article 159 (d) of the Constitution.
41. I have considered the averments and submissions of the parties herein. Indeed this preliminary objection is pegged upon the provisions of section 85 of the Public Service Commission Act 2017 and section 77(2) of the County Government Act 2012.
42. Section 85 of the Public Service Commission Act deals with appeals from the County Government Public service and states as follows:.....

85. Appeal from County Government public service The Commission shall, in order to discharge its mandate under Article 234(2)(i) of the Constitution, hear and determine appeals in respect of any decision relating to engagement of any person in a County Government, including a decision in respect of—

- (a) recruitment, selection, appointment and qualifications attached to any office;
- (b) remuneration and terms and conditions of service;
- (c) disciplinary control;
- (d) national values and principles of governance, under Article 10 and values and principles of public service under Article 232 of the Constitution;
- (e) retirement and other forms of removal from the public service;
- (f) pension benefits, gratuity and any other terminal benefits; or
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine an appeal in that regard.



43. Section 86 deals with the procedure to be adopted and 86(1) in particular states:

“Any person who is dissatisfied or affected by a decision made by any authority or persons in respect of a County Government Public Service may appeal to the commissions against the decisions.”

44. The petitioner however in opposition to the preliminary objection filed herein submitted that the impugned decision the subject of this petition is a decision made by the 3rd respondent His excellency Hon. Arthur Johnson Sakaja and was not a decision by the 2nd respondent, the Nairobi County Public Service Board.

45. Indeed the termination of the petitioner herein was made by the 3rd respondent as per the letter BKN14 and not a direct decision by the County Public Service Board.

46. In the circumstances of the case, the decision is not one appealable to the Public service commission as envisaged under section 85 and 86 the *Public Service Commission Act*.

47. If indeed that decision was from the County Public Service Board or through authority of the County Public Service then that is yet to be determined by this court and which matter can be determined within this petition. I find the preliminary objection then has no merit and is dismissed accordingly. The parties directed to proceed with the main petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

