



**Murimi v County Government of Kirinyaga & another; Public Service Commission (Interested Party) (Miscellaneous Application E006 of 2024) [2024] KEELRC 2194 (KLR) (12 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2194 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
MISCELLANEOUS APPLICATION E006 OF 2024  
ON MAKAU, J  
SEPTEMBER 12, 2024**

**BETWEEN**

**NAHASHON MURIMI ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KIRINYAGA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD OF KIRINYAGA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

**RULING**

1. This ruling relates to the applicant’s Notice of Motion dated 15<sup>th</sup> March 2024, brought under section 89 of the *Public Service Commission (PSC) Act* and section 12 (3) (VIII) of the *Employment and Labour Relations Court (ELRC) Act*. It seeks the following reliefs: -
  - a. The motion herein be certified urgent and an inter-partes hearing date be allocated on priority basis on account of urgency.
  - b. That the decision of the Public Service Commission made vide letter dated 14<sup>th</sup> April, 2021 reinstating into service the Applicant without loss of benefits and payment of all outstanding emoluments be recognized, adopted and enforced as a judgment of the court and a decree to issue forthwith.
  - c. Costs of this Application and interest thereon be provided for.
  - d. Any other and further relief that this Honorable Court may deem fit and just to grant.



2. The motion is premised on the grounds set out in its body and the Supporting Affidavit sworn on 15<sup>th</sup> March 2024. Basically, the applicant's case is that he was dismissed from employment by the respondents and appealed against the said decision before the Interested Party.
3. The respondents have opposed the motion vide Replying Affidavit sworn on 20<sup>th</sup> May 2024 by the respondent's County Attorney, Ms Carolyn Kinyua. In brief, the respondents' case is that the applicant was lawfully dismissed for participating in an illegal strike and failing to participate in disciplinary hearing. Further that the appeal to the commission was filed out of time and the ensuing decision is incapable of being enforced/implemented. Besides the appeal was never served on the respondents and therefore they were condemned unheard.
4. The material before me shows that the Interested Party (PSC) considered the appeal and made the following decision: -

“Commission decision.

The Commission found the appeal meritorious and therefore decided that it be allowed as Mr. Murimi availed evidence confirming that he has been working and no rebuttal has been given to challenge his claim.”
5. Section 89 (1) of the *Public Service Commission Act* provides that: -

“Any person who is affected by the decision of the Commission made under this part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162 (2) (a) of the *Constitution*.”
6. The essence of the above provision is that a party affected by the decision of the PSC in relation to an appeal under section 77 of the *County Government Act*, may file the decision before the ELRC and have it enforced as a decree of the court. Such provision does not give the court discretion to accept or reject, neither does it give the court any power to enrich the decision nor return it to the Commission.
7. In my view, the law is deficient to that extent and I recommend for amendment to clarify the extent of the court's powers, when faced with a decision like the one before me. Can a party who finds the decision by commission deficient, ask the court to make orders which are not contained in the decision by the Commission?
8. My view is that, the court cannot travel outside the four corners of the decision by the Commission. Doing so would be reviewing the decision or sitting on appeal over the decision without jurisdiction.
9. Having said that, I must hold that section 89 of the *PSC Act* does not leave any chance for litigation over the decision by the commission. The process is non-litigious and all what the court is supposed to do is to receive the decision and enforce it as if it were its own decision.
10. The applicant has attached as “Exhibit NM8” to the application, copy of the appeal dated 18<sup>th</sup> September 2020. The copy is illegible to a great extent but in the last paragraph the applicant requests the commission to rescind the decision by the respondents. The Commission allowed the appeal.
11. In line with the provisions of section 89 of the *PSC Act*, I adopt the decision of the Commission dated 14<sup>th</sup> April, 2021 for enforcement as a decree of this court. A decree to be drawn as per the decision adopted. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF SEPTEMBER, 2024.**

**ONESMUS N MAKAU**



**JUDGE**

**Order**

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

