



County Government of Wajir & another v Public Service Commission (Judicial Review Application E048 of 2024) [2024] KEELRC 2700 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2700 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E048 OF 2024**

B ONGAYA, J

OCTOBER 30, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS**

AND

**IN THE MATTER OF ARTICLES 10, 22, 23(3), 24, 38(3) (C), 47 AND
165(3) (A) AND (6) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE LAW REFORM ACT,
CAP 26 LAWS OF KENYA SECTIONS 8 AND 9**

AND

IN THE MATTER OF SECTION 88(5) OF THE PUBLIC SERVICE COMMISSION ACT, 2017

AND

**IN THE MATTER OF AN APPLICATION FOR REVIEW OF THE DECISION
OF THE PUBLIC SERVICE COMMISSION DECIDED ON 19TH JUNE 2024**

AND

**IN THE MATTER OF REGULATION 24(8) OF THE PUBLIC SERVICE
COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022**

BETWEEN

THE COUNTY GOVERNMENT OF WAJIR 1ST APPLICANT

THE PUBLIC SERVICE BOARD, WAJIE COUNTY 2ND APPLICANT

AND

PUBLIC SERVICE COMMISSION RESPONDENT



RULING

1. The applicants filed chamber summons dated 08.09.2023 under order 53 rules 1 and 2 of the Civil Procedure Rules, sections 8 and 9 of the Law Reform Act, Cap 26 Laws of Kenya, the Fair Administrative Action Act, and all other enabling provisions of the law. The applicants seek for orders:
 1. Spent
 2. That the applicant is granted leave to apply for orders of certiorari to quash in its entirety the respondent's decision decided on 19.06.2024, and transmitted vide the letter dated 24.06.2024.
 3. That the said leave operates as stay of the respondent's decision decided on 19.06.2024, and transmitted vide the letter dated 24.06.2024.
 4. That the applicant is granted leave to apply for orders of mandamus compelling the respondent to admit the applicant's Application for Review dated 30.06.2024.
 5. That the cost of this application be provided for.
2. The respondent opposed the application through their Grounds of Opposition dated 11.10.2024:
 1. That this Honourable Court is not seized with the jurisdiction to entertain this matter as vide Judgement dated 26.07.2024 in Nairobi ELRC Petition No. E047 of 2024: Ibrahim Abdi Mohamed & Others -v- Adow Osman Ahmed, Wajir County Public Service Board Secretary & Others, the Honourable Court while considering a petition filed pursuant to section 89 of the Public Service Commission Act, entered judgement for the petitioners as follows:
 - i. The declaration that the decision by the Public Service Commission herein is hereby adopted as a decree of the Court and the decree to issue for orders:
 - a. The Appellants revert to the positions they held before they were seconded by the County Public Service Board;
 - b. The County Government of Wajir be and is hereby directed to pay the Appellants all the accrued salaries, allowances and benefits from the date they were redeployed back by the County Public Service Board; and
 - c. The respondents and the County Secretary, Wajir County Government be and are hereby directed to implement the decree.
 - ii. The respondents to pay the petitioners' costs of the petition.
 2. That this Honourable Court is functus officio on the matter as the Court has recognized, adopted and enforced the Commission's decision dated 06.09.2023 as a decree of the Court, which decision the applicant is asking this court to direct the Respondent to review.
 3. That the Public Service Commission cannot review its decision of 06.09.2023 as its decision is now a Judgement of this Honourable Court and by considering it, they would be sitting on appeal of this Court's decision.



4. That the applicant herein can only approach the Court of Appeal to challenge the Judgement dated 26.07.2024 in Nairobi ELRC Petition No. E047 of 2024: Ibrahim Abdi Mohamed & Others -v- Adow Osman Ahmed, Wajir County Public Service Board Secretary & Others.
 5. That the Application filed herein is incompetent, fatally defective, an abuse of Court process and should therefore be struck out with costs to the respondent.
3. Parties made their oral submissions before this Honourable Court on 17.10.2024. The Court returns as follows:
- a. The case as urged for the respondent is upheld on all grounds.
 - b. Counsel for the applicants confirmed that the application for leave is subject of the Commission's decision already adopted as a decision of the Court. Further, the Commission had already determined the administrative review application prior to adoption of the decision by the Court.
 - c. The Court finds for the respondent that the application for leave for judicial review application to be filed is indeed an abuse of Court process.
 - d. All parties are public bodies and each will bear own costs of the proceedings.

In conclusion, the application by the chamber summons dated 08.09.2024, is hereby dismissed and each party to bear own costs of the proceedings.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 30TH OCTOBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

