



Leonard v Bomet County Public Service Board & 4 others (Petition E009 of 2025) [2025] KEELRC 2642 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2642 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
PETITION E009 OF 2025
J RIKA, J
SEPTEMBER 30, 2025**

BETWEEN

SIELE KIPNGETICH LEONARD PETITIONER

AND

BOMET COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT

THE COUNTY GOVERNMENT OF BOMET 2ND RESPONDENT

THE CECM FINANCE, ECONOMIC PLANNING AND ICT 3RD RESPONDENT

THE CHIEF OFFICER FINANCE 4TH RESPONDENT

THE CHIEF OFFICER, ECONOMIC PLANNING 5TH RESPONDENT

RULING

1. The Petition herein is a dispute, involving the County Public Service, Bomet County.
2. The Petition is dated 14th May 2025, and founded on the Affidavit of the Petitioner, sworn on 14th May 2025.
3. The Petitioner describes himself as a resident of Bomet County, who brings the Petition in the public interest, under Article 22 of *the Constitution*.
4. The Petitioner’s main prayer, is for an order of certiorari, to quash the entire recruitment process, initiated by Bomet County Public Service Board, the 1st Respondent herein, communicated through the advertisement dated 17th April 2025, on grounds of illegality, unconstitutionality, and systemic exclusion of marginalized groups.
5. Filed with the Petition is an Application for conservatory measures, dated 14th May 2025, founded on the Affidavit of the Petitioner, sworn the same date.



6. This Application is the subject matter of today's Ruling.
7. The Application seeks conservatory measures, restraining the Respondents from continuing with recruitment of officers to fill the advertised vacancies, pending hearing and determination of the Petition.
8. Ex-parte interim order issued in favour of the Petitioner on 14th May 2025. Directions issued on filing of Replying Affidavits and Submissions, on 3rd July 2025.
9. The 1st Respondent filed an Application dated 27th May 2025. seeking to set aside the ex parte orders. The Court does not find such an Application necessary, because ex parte orders, if issued without merit, can be set aside upon hearing the Response to the Application, where the orders issued.
10. The Respondents confirmed filing and exchange of their respective Affidavits, Grounds of Opposition and Submissions at the last appearance before the Court, on 31st July 2025. The Petitioner did not attend Court at the last appearance to confirm filing and exchange of his Submissions.
11. There are various grounds upon which the conservatory measures are sought. They include: -Auditor-General's Report for 2023/ 2024, confirms that Bomet County surpassed the legal limit for wage expenditure. Recruitment threatens to escalate noncompliance under Regulation 25[1][b] of the PFMA [County Government], Regulations, capping wage spending at 35% of the total revenue. The Report highlights lack of transparency and accountability in the County. Recruitment disregards existing pending bills across the Counties, standing at over Kshs. 226 billion. Recruitment prioritizes administrative posts, neglecting education and health sectors in the County. Allocation of ECDE vacancies, favours urban wards, severely disregarding rural wards that historically suffer chronic teacher shortages. Recruitment of 15 nursing positions, undermines planning commitments under County Fiscal Strategic Paper 2025 / 2026. Recruitment period between 17th April 2025 and 11th May 2025 was unreasonably short. The Respondents have breached the principles of equity, inclusiveness, and fairness under *the Constitution*. The Petition has widespread support among the sovereigns, the residents of Bomet County. Conservatory measures are necessary to avoid entrenchment of cycles of poverty and marginalization.
12. Simeon Langat, Bomet County Secretary and Head of its Public Service Board, swore an Affidavit in reply, as did Acting Chief Executive Officer of the 1st Respondent Chesang Emmy. Emmy's Affidavit was sworn on 27th May 2025. The date when Simeon swore his Affidavit is not clear.
13. They deny that the recruitment process is unlawful, irregular and discriminative. These allegations are unsubstantiated.
14. The advertised positions, including those of the ECDE, are for replacement of officers who have left service, either through resignation or natural attrition. The allegations about failure to address teacher and nurse shortages, are false. Nurses recruited at the height of Covid-19 were retained.
15. Recruitment is accountable and transparent. The Petitioner relies on conjecture. He has no data, and has provided none to the Court, on his allegations concerning ward marginalization. Recruitment is a continuous process, not a one-time process, where vacancies are shared out.
16. Administrative vacancies were advertised to fill positions of officers whose contracts had lapsed. Recruitment is in accordance with the County Fiscal Strategy Paper 2025/ 2026, and with the development framework.



17. The challenge concerning legal ceiling for wage expenditure, flagged by the Auditor-General, is not unique to Bomet County. It is a national issue, originating from the Government of Kenya. The audit issues are subjected to review by the relevant Senate Parliamentary Committee.
18. The 1st Respondent also relies on Grounds of Opposition dated 27th May 2025. Its position is that conservatory orders only issue where a party alleging infringement, specifies the right or fundamental freedom that has been infringed. The Petitioner has not specified what right or freedom in the Bill of Rights, has been infringed. There is no real or imminent threat of infringement shown. The orders sought would injure, rather than protect public interest.
19. The County Executive Committee Member, Finance, Economic Planning and ICT, Rosa Chepn'etich swore an Affidavit on 20th July 2025, expressing the position of the 2nd, 4th and 5th Respondents.
20. She restates that the issue concerning wage expenditure limit, is not unique to Bomet County. It is a national issue, inherited from the predecessor Local Governments. The County Government has remained in conformity with Section 107 [2] of the PFMA, 2012. Any deviations have been explained and addressed through oversight mechanisms, such as the Senate Standing Committee on Finance and Budget, and the County Assembly.
21. Recruitment was budgeted for, to principally, fill critical gaps in the public service occasioned by employee exits. There is no evidence of extra budgetary expenditures.
22. Emmy confirms that recruitment is transparent; budgetary ceilings and fiscal policies were observed; extensive public participation was conducted; and the PFMA and *the Constitution* of Kenya, heeded.

The Court Finds: -

23. From the outset, the Court observes that the Petition herein, involves recruitment to fill vacancies, within the County Public Service, Bomet County.
24. There are laws and rules which provide for dispute resolution in all Public Service, including the County Public Service.
25. These laws and rules underline the primacy of the doctrine of exhaustion. The laws and rules are aimed at implementing the mandate of the Public Service Commission under Article 234 of *the Constitution*, which includes inter alia, to hear and determine Appeals, in respect of County Governments' Public Service.
26. Section 85 of the *Public Service Commission Act*, Cap 185 the Laws of Kenya, provides thus:-

“The Commission shall, in order to discharge its mandate under Article 234[2][i], hear and determine appeals in respect of any decision relating to engagement of any person in a County Government...”
27. Appealable matters under this law, include recruitment, selection and qualifications attached to any office; national values and principles of governance under Article 10; and values and principles of public service, under Article 232 of *the Constitution*.
28. The procedure in approaching the Public Service Commission on Appeal or Review, is prescribed under Sections 86 and 88 of the *Public Service Commission Act*.



29. Section 89 [1] prescribes the jurisdiction of the Employment and Labour Relations Court, in disputes involving Public Service. It reads: -

“ Any person who is affected by a 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*.”

30. This law is replicated under Section 77 of the *County Governments Act*, Cap 265 the Laws of Kenya, directing any person dissatisfied or affected by a decision made by a County Public Service Board, to prefer an Appeal to the Public Service Commission. The appealable matters are word for word, as contained in the *Public Service Commission Act*.

31. Section 85 of the *County Governments Act* retains the right of review, by County Public Servants, on discovery of fresh material facts; error apparent on the record of the initial decision; and where there is manifest absence of parity of treatment, in the circumstances of the case.

32. Citizens such as the Petitioner herein, also have a right to petition the County Government on any matter under the responsibility of the County Government, under Section 88 of the *County Governments Act*. Section 89 binds the County Governments to respond to citizens’ Petitions.

33. There are mechanisms for dealing with grievances and disputes arising from the County Public Service, other than litigation.

34. The Public Service Commission [County Appeals Procedure] Regulations, Legal Notice No. 92 of 2022, regulate hearing and determination of Appeals filed with the Public Service Commission by Public Officers or other persons, in respect of County Governments’ Public Service.

35. The Regulations provide for Appeals, as well as Preliminary Proceedings, Interim Applications and Preliminary Objection.

36. The Application and Petition filed by the Petitioner fall primarily within the mandate of the Public Service Commission, in accordance with *the Constitution*, the *Public Service Commission Act*, the *County Governments Act* and the Public Service Commission [County Appeals Procedure] Regulations.

37. In *Nyaoga v. Chairman, Kisii County Assembly & 3 Others* [2023] KECA [1540] KLR; *Mutanga Tea & Coffee Company Limited v. Shikara Limited & Another* [2015]e-KLR; and *William Odhiambo Kamogo & 3 Others v. Attorney-General & 4 Others* [2020]e-KLR, the Court of Appeal of Kenya, upheld the doctrine of exhaustion, underlining that litigants must exhaust all available administrative remedies, before seeking judicial remedies. Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution*, or an Act of Parliament, that procedure should strictly be followed.

38. The Court therefore declines jurisdiction on the Petition and Application for conservatory measures.

It Is Ordered: -

- a. The Petition and the Application for conservatory measures are declined.
- b. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 30TH DAY OF SEPTEMBER 2025



JAMES RIKA
JUDGE

