



Bulle v Garissa County Public Service Board & another (Cause E154 of 2025) [2025] KEELRC 2748 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2748 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E154 OF 2025
CN BAARI, J
OCTOBER 9, 2025**

BETWEEN

ABDI SHALE BULLE CLAIMANT

AND

GARISSA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT

GARISSA COUNTY GOVERNMENT 2ND RESPONDENT

RULING

1. This ruling relates to the Respondents' Notice of Preliminary Objection dated 28th May, 2025 seeking that the Claimant's claim be struck out on the following grounds: -
 - i. The Claimant has not exhausted the internal dispute resolution mechanisms provided under Section 77 of the *County Governments Act* and the *Public Service Commission (County Government Public Services Appeals Procedures) Regulations, 2016*.
 - ii. The Claimant's alleged appointment as Chief Executive Officer of the Garissa Municipal Board was not conducted in accordance with Sections 59, 63, and 65 of the *County Governments Act*, thus irregular and unlawful.
 - iii. The Claimant's direct approach to this Honourable Court without first seeking redress through the established internal mechanisms violates the doctrine of exhaustion.
 - iv. That further, and without prejudice to the foregoing, the Respondent avers that there is a pending appeal before the Court of Appeal at Nairobi involving the same parties and substantially the same subject matter as in the present suit. Consequently, the instant proceedings offend the doctrine of sub judice as set out under Section 6 of the *Civil Procedure Act*.



- v. That the suit is premature, incompetent, misconceived, and an abuse of the court process. The Claimant has not demonstrated any exceptional circumstances that would justify bypassing the internal dispute resolution mechanisms.
2. Parties canvassed the objection through written submissions and submissions were received from both parties.

The Respondents' Submissions

3. It is the Respondents' submission that the Claimant herein invoked the jurisdiction of this Honorable Court prematurely and thus an abuse of the process of the court, as the orders sought in the application as well as in the statement of claim are untenable and unjustifiable.
4. The Respondents submit that Section 7(10) of the *Public Appointments (County Assemblies Approval) Act, 2017* avails every person with an opportunity to challenge any appointment contesting suitability of a candidate as may be nominated and subject of such approval hearing, and that the Claimant did not present any memorandum to the County Assembly objecting to the process/members subject to it.
5. They sought to rely in the Court of Appeal decision in *Geoffrey Muthinja Kabiru & 2 Others versus Samuel Munga Henry & 1756 others* [2015] eKLR for the holding that: -

"It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be for of last resort and not the first port of call the moment a storm brew.... This accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution."
6. It is the Respondents' submissions that the substratum of the Claimant's dispute can be protected through the Public Service Commission since its mandate under Article 234[2][i] of the *Constitution* is broad, and includes the mandate to make provisional and final decisions. They submit further that the *Public Service Commission [County Appeals Procedures] Regulations, 2022* provides for preliminary proceedings, interim applications and preliminary objections.
7. They submit that Regulation 13 allows any party to the appeal, to apply for any orders or directions to the Commission, before the appeal is heard and determined.
8. The Respondents submit that the Claimant herein having bypassed the procedure under the *Public Appointments (County Assemblies Approval) Act* 2017, the suit herein is immature and thus ought to be struck out for want of exhaustion and by extension jurisdiction.
9. It is their submission that the Regulations above, have made justice for the Claimant fully accessible at the Public Service Commission therefore, making the Claimant's direct approach to this court a violation of the doctrine of exhaustion.
10. The Respondents submits that Section 77 of the *County Governments Act*, allows any person, dissatisfied or affected by a decision made by the County Public Service Board or by a person in exercise or purported exercise of disciplinary control against any Public Officer, to appeal the decision at the Public Service Commission.
11. It is the Respondents' submission that the above provisions are underscored by Sections 85 and 86 of the *Public Service Commission Act* No. 10 of 2017 and that the doctrine of exhaustion requires that, if an administrative remedy is provided by statute, a Claimant must seek relief from the administrative body before seeking judicial relief.



The Claimant's Submissions

12. The Claimant submits that in the present case, there is no decision that was ever made by the 2nd Respondent with respect to the Claimant's employment, and as such, there was nothing to be appealed against to the Public Service Commission.
13. The Claimant submits further that the option of appealing to the Public Service Commission is discretionary as evidenced by the use of the word May in Section 77(1) of the [County Governments Act](#).
14. It is his submission that it is the duty of Courts of justice to try to get at the real intention of the [Constitution](#) or legislation by carefully attending to the whole scope of the [Constitution](#) or a statute to be considered. Courts have pointed out on many occasions that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed.
15. The Claimant submits that Section 77 of the [County Governments Act](#) and *Public Service Commission (County Government Public Service Appeals Procedures) Regulations, 2016* are inapplicable in so far as these proceedings are concerned as the Claimant resigned and there was no decision made by the 2nd Respondent capable of being appealed against. He submits that the exhaustion doctrine and its exceptions are similarly not applicable to the present case.
16. It is the Claimant's submission that from his pleadings, witness statement and documents filed, it is apparent that his cause of action is based on constructive dismissal, a cause of action which the court case has jurisdiction to determine. He further states that he does not challenge any decision by the 2nd Respondent.

Analysis and Determination

17. Having considered the preliminary objection and the rival submissions, the sole issue that arises for determination is whether the Objection has merit.
18. The Claimant lodged a claim dated 3rd March, 2025, wherein, he claims to have been constructively dismissed having tendered his resignation from the service of the Respondents on 2nd June, 2023 on account of the conduct of the Respondents.
19. The Respondents contend that the claim offends the doctrine of exhaustion premised on Article 234(2)(i) of the [Constitution](#) read with Sections 77 of the County Government Act and Sections 85 and 86 of the [Public Service Commission Act, 2017](#), which require that a party exhausts all available remedies before invoking the jurisdiction of the court. It is their position that devoid of an appeal to PSC, this court lacks jurisdiction to entertain the suit.
20. Section 77 of the [County Government Act](#) states thus: -
 1. 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 (in this Part referred to as the "Commission") against the decision.
 2. The Commission shall entertain appeals on any decision relating to employment of a 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.....”

21. Further, Section 87(2) of the Public Service Commission Act states: -

“2. 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 service unless the procedure provided under this Part has been exhausted.”

22. By dint of the foregoing provisions, there is no doubt on my mind that this court lacks jurisdiction to entertain a dispute arising from the county government public service in the first instance, and that a litigant is required to exhaust the appellate mandate of the Public Service Commission, conferred both by Statute and the Constitution before invoking the jurisdiction of this court.

23. Looking at the Claimant’s case, the question that comes to mind is whether the claim falls within the purview of the Public Service Commission as spelt out above.

24. The Claimant’s claim does not arise from recruitment, selection, appointment, qualifications, remuneration and terms and conditions of service, disciplinary control, pension benefits or removal from office. The Claimant instead, resigned from the service of the Respondents and his claim is one for constructive dismissal.

25. A claim of constructive dismissal can only be determined by this court by assessing the conduct of the employer, and therefore, such a claim does not by law fall within the appellate power of the PSC and the Claimant cannot have been expected to appeal to the PSC before invoking this court’s jurisdiction.

26. The other points subject of the objection such as whether the Claimant was appointed Chief Executive Officer or whether there is an existing appeal between the parties herein, are issues of facts that can only be determined at the hearing of the case. In the case of *Mukisa Biscuits Manufacturing Co. Ltd -Versus- West End Distributors Ltd.* {19691 E.A. 696 Lord Charles Newbold P. had this to say on preliminary objection: -

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

27. In the upshot, I find and hold that the Claimant’s claim is not subject to the appellate jurisdiction of the Public Service Commission and does not therefore, offend the doctrine of exhaustion. This Court has the jurisdiction to hear and determine this matter.

28. I proceed to find the Respondents’ objection devoid of merit, and is hereby dismissed with costs in the cause.

29. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025.

C. N. BAARI



JUDGE

Appearance:

Mr. Mokuu present for the Claimant

N/A for the Respondents

Ms. Esther S - C/A

