



**Tisia v County Secretary –Head of County Public Service of Uasin Gishu & 3 others
(Cause E002 of 2025) [2025] KEELRC 2720 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2720 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E002 OF 2025
MA ONYANGO, J
OCTOBER 3, 2025**

BETWEEN

JEPCHIRCHIR TISIA CLAIMANT

AND

**COUNTY SECRETARY –HEAD OF COUNTY PUBLIC SERVICE OF UASIN
GISHU 1ST RESPONDENT**

COUNTY PUBLIC SERVICE BOARD UASIN GISHU 2ND RESPONDENT

**CHIEF OFFICER-PUBLIC SERVICE MANAGEMENT, UASIN GISHU
COUNTY 3RD RESPONDENT**

THE COUNTY GOVERNMENT OF UASIN GISHU 4TH RESPONDENT

RULING

1. The Respondents filed a Preliminary Objection dated 20th February 2025 on the following grounds: -
 - i. That the Honourable Court lacks jurisdiction to entertain this claim pursuant to section 77 of the County Government Act No. 17 of 2012 and section 87 of the *Public Service Commission Act* under the doctrine of exhaustion.
 - ii. That this claim be struck out/ dismissed with costs to the Respondent.
2. Pursuant to the directions of this court issued on 25th May 2025, the Preliminary Objection was disposed of by way of written submissions.
3. In her submissions dated 26th May 2025, the Claimant in opposition to the ground raised in the Preliminary Objection that the instant suit offends the doctrine of exhaustion of internal remedies, submitted that there was no decision rendered by the Respondent that would have triggered the appeal process under section 77 of the County Government Act.



4. According to the Claimant, the suit herein relates to a claim for underpayment of wages during Claimant's employment up until her retirement from service on the 4th May 2024 and therefore, it is not a claim against a decision made by the Respondent capable of an appeal to the Public Service Commission within the purview of section 77 of the County Government Act.
5. It is the Claimant's submission, that a claim for underpayment is a continuing injury that is required under section 90(1) of the Employment Act to be instituted within 12 months after cessation and that having retired from employment on 4th May 2024, she had until 4th May 2025 to file the present suit.
6. The Claimant has however urged the court that should it uphold the preliminary objection, then it should not dismiss the instant claim but instead, stay the same pending the exhaustion of the process envisaged under section 77 of the County Government Act. This according to the Claimant, will give her room to come back to this court for a relief of underpayment should the appeal process be unsuccessful as the claim shall then be deemed to be statute barred under section 90 of the Employment Act.
7. The Respondents in their submissions dated 8th May 2025 have maintained that the Claimant has invoked the jurisdiction of this court prematurely in total disregard to section 77 of the County Government Act.
8. According to the Respondents, the issues raised by the Claimant herein are employment in nature and that pursuant to section 77(2) of the Employment Act, an issue relating to recruitment, remuneration and conditions of service that fall within the ambit of the County Service Board are appealable to the Public Service Commission on the first instance.
9. It is the Respondents contention that the appeal process under section 77 of the County Government Act to the Public Service Commission is a mandatory process under section 85 and 86 of the Public Service Commission Act.
10. In support of their position that the Claimant has moved the court prematurely before exhausting the dispute resolution mechanisms available, the Respondents cited the cases of Secretary, Sabastian Sunya & 5 others vs Busia County Public Service Board & Another, Bungoma ELRC Petition No. E005 of 2022, County Service Board & Another vs Hulbhai Gedi Abdille (2017) eKLR, Sammy Kalundu vs AG, Clerk of the Nairobi City County Assembly (2022) eKLR and James Akelerio alias Muguu & Another vs Moses Kasaine Lenonkulal & 3 others (2014) eKLR.
11. The Respondents thus urged the court to strike out the claim with costs.

Analysis and determination

12. The only issue that presents itself for this court's determination is whether the preliminary objection is merited.
13. The import of a preliminary objection was stated in Mukisa Biscuits Manufacturing Ltd s West End Distributors (1969) EA 696 where the court observed: -

“A preliminary objection is in the nature of what used to be a demurrer. 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 is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.



14. The Claimant in her submissions in response to the allegation made that the suit has been filed prematurely averred that the suit herein relates to a claim for underpayment of wages during Claimant's employment up until her retirement from service and that it is not a claim against a decision made by the Respondent capable of an appeal to the Public Service Commission within the purview of section 77 of the County Government Act
15. Section 77 of the County Government Act provides, in part, as follows: -
 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;
 - 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 removal from 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 on appeal in that regard.
16. Section 87(2) of the *Public Service Commission Act* provides as follows: -

“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.”
17. In the instant Preliminary Objection, the Respondents contend that the Claimant has filed these proceedings without first exhausting the dispute resolution procedures set out above.
18. I have perused the Statement of Claim dated 13th January 2025 filed by the Claimant herein. In my opinion, the issue in dispute is with regard to the allegation that the Claimant was underpaid during the course of her employment with the Respondents in the sum of Kshs 768,382.50 which amount she now seeks to be awarded by this court.
19. Although I agree with the position expressed by the Respondents that where the law provides for an alternative mechanism for resolving a dispute, parties should pursue that mechanism before invoking the court's jurisdiction, I do not think that the circumstances of this case favor this position.
20. As rightly argued by the Claimant, there is no decision that has been made by the County Public Service Board that is appealable to the Public Service Commission.



21. In the circumstances, I find the Preliminary Objection dated 20th February 2025 to be without merit and dismiss it with no orders as to costs.

DATED, DELIVERED AND SIGNED THIS 3RD DAY OF OCTOBER, 2025.

M. ONYANGO

JUDGE

