

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC PETITION NO. E020 OF 2025

JOSHUA OTIENDE ADEDE.....PETITIONER

VERSUS

LAPSET CORRIDOR DEVELOPMENT AUTHORITY...1ST RESPONDENT

STEPHEN IKUA.....2ND RESPONDENT

BERNARD OLUOCH.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

JUDGMENT

The matter was filed vide a notice of motion dated 14th February 2025 seeking the following reliefs against four (4) named Respondents:

1. Spent
2. Spent
3. THAT pending inter parties hearing and determination of this application and petition herein the Honourable be pleased to issue an interim order of injunction prohibiting the respondent or any of his agents from implementing in any way whatsoever the transfer letter issued on the 6th February by the 2nd respondent herein
4. THAT consequent to the grant of the prayers above, the Honourable court be pleased to issue further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour of the justice
5. THAT the costs of this application be provided for.

From the papers filed before court, no petition was filed accompanying the notice of motion.

Meanwhile, two Interested Parties being the Public Service Commission and State Corporation Advisory Committee were joined to the suit on 10th March 2025. The court issued interim orders suspending the transfer pending the hearing and determination of the matter.

The Applicant was dismissed from employment by a letter dated 28th May 2025 by the 1st and 2nd Respondents. The Applicant filed an application dated 4th June 2025 seeking to have the 1st and 2nd Respondents cited for contempt of court for defying the interim orders of the court to stop the intended transfer.

Meanwhile the Public Service Commission (PSC) filed a notice of preliminary objection to wit that:

- (i) The Petitioner has invoked the jurisdiction of this court prematurely as section 74 of the Public Service Commission Act Cap 165 laws of Kenya confers the mandate to hear and determine appeals arising from decisions made by authorized officers or other authorities in exercise of disciplinary control against public officers under the Act upon the PSC.
- (ii) That in addition, Regulation 77(1) of the Public Service Commission, Regulations 2020 provides that:
“77(1) The Commission may on its own initiative or on a complaint made by any person, investigate any issue relating to the

commission's constitutional or statutory functions and powers and make such determination as may be just in the circumstances.

(2) The Commission in conducting an investigation under paragraph (1), shall afford every relevant party an opportunity to be heard before the Commission invokes a determination in the draft.”

Public Service Commission submits that the court lacks jurisdiction to entertain the matter and it be struck off.

The Respondents on the other hand raise a preliminary issue that applications dated 14th February 2025 and 4th July 2025 are fundamentally defective as they are not supported by any underlying petition. That the Petitioner having failed and neglected to file a petition, the omission is incurable rendering the application defective ab initio. This means they have no legal foundation upon which to stand.

That an application for contempt must be based on substantive suit. In the absence of a properly filed petition, the court lack jurisdiction to entertain an application for contempt. The Applicant cannot seek remedies that are not based on a cause of action.

The Respondents invoke provisions of section 19 of the Civil Procedure Act which provides:

“Every suit shall be instituted in such manner as may be prescribed by Rules. While reliance is placed on Order 3 Rule (i) of the Civil Procedure Rules 2010 which provides that:

“Every suit shall be instituted by way of a plaint or in such other manner that may be prescribed. As a general rule, a suit can only be instituted by way of plaint, petition or an originating summons.”

The court is referred to the case of ***Geoffrey Ndungu Theuri versus Law Society of Kenya [1988] eKLR*** in which the court stated:-

“...the order specifically refers to a suit which is defined under section 2 of Civil Procedure Act in these terms. ‘Suit’ means all civil proceeding commenced in any manner prescribed under the Civil Procedure Rules and an Applicant is not entitled under order 30 of the Civil Procedure Rules to seek or obtain an order for injunctive relief against another party without filing a suit. The grossly abused section 3A of the Civil Procedure Act does not give the court the power to act without jurisdiction.”

Merits

The application dated 4th June 2025 for contempt of court is not supported by grounds set out on the face of the application nor is it supported by an affidavit attached to the notice of motion.

The Applicant however attached a letter dated 28th May, 2025 titled “Dismissal from employment due to gross misconduct.” The letter shows that the Applicant was dismissed from employment of the 1st Respondent with immediate effect.

The Applicant in his submissions dated 14th April 2025 submits that he filed a petition dated 14th February 2025 seeking the following orders *inter alia*:-

- (a) An interim order suspending punitive transfer letter issued on 6th February 2025 pending hearing and determination of the petition.
- (b) The Petitioner also filed supplementary affidavit dated 14th April 2025 in which he deposes that he was illegally transferred without procedural fairness and in violation of Article 47 of the Constitution and Fair Administrative Act, 2015. The supplementary affidavit is in response to a replying affidavit of the Respondents in which the allegations of punitive transfer are denied and the Respondent states that no substantive petition has been filed and that the application by the Applicant are unsupported and stand to be dismissed.

The Applicant deposes that he filed a petition dated 14th February 2025 together with the notice of motion of the same date. That the applications are non-defective. The Applicant prays that his two applications be granted as prayed by stopping the punitive transfer and punishing the 1st and 2nd Respondent for contempt of court. That the dismissal upon a sham disciplinary hearing is a direct affront on the interim orders of the court to upset the status quo. That the same was retaliatory in nature.

The Respondents in the reply to the allegation of contempt state that the interim orders issued on 10th March 2025 were particular and specific that;
“Interim order is issued suspending punitive transfer letter issued on 6th February by the 2nd Respondent pending the inter-parties hearing and determination of the application and the petition herein.”

That the 1st Respondent did not effect the transfer to the Turkana office as per the letter dated 6th February 2025. That indeed, the Applicant took leave on 21st May 2025 while still based at the Nairobi office which is evidence that the orders were complied with and a leave form was attached to the replying affidavit of Alexander Mativo dated 2nd July 2025.

DETERMINATION

The preliminary objection by the 1st Interested Party that the Applicant ought to have appealed the intended transfer to Public Service Commission before coming to court in terms of section 77 of PSC Act Cap 185 Laws of Kenya read with Regulation 77 of PSC Regulations 2020 is a valid objection. This court, the High Court and the Court of Appeal have endorsed this position in numerous decisions. In **Cause no 250 of 2018 Martin Kabubii Mwangi versus County Government of Laikipia (2018) eKlr** it was held that;

“The exhaustion principle enunciated in precedents such as the case of Secretary, County Public Service & Another v Hulbhai Gedi Abdille (supra) does not permit an election as to the parts of a statute that one should rely on. Put another way, it removes discretion on the part of a litigant from choosing whether to follow the provision or not. In this case the suit was filed before the exhaustion of the remedy under the law, namely the provisions of Section 77 of the County Governments Act. The Claimant ought to have appealed against his removal to the Public Service Commission before moving the court. The suit did not fall in the category of suits that can be entertained by the court. As he did not appeal as provided for in law, the suit is a

non-starter and is accordingly struck out with no order as to costs”.

The Applicant approached the court prematurely by a notice of motion vide which the court granted interim orders *ex parte*.

The court is satisfied that this matter ought to have been referred to PSC on Appeal for appropriate investigation, hearing and decision to be made.

On this ground alone, this court lack jurisdiction to entertain this matter.

With regard to whether the Applicant filed a petition together with the notice of motion dated 14th February 2025, the facts are disputed, yet the Petitioner did not attach a copy of the alleged petition to the supplementary affidavit filed in response to the replying affidavit of the Respondents in which they allege no petition was filed.

To date, this court has not yet had sight of the alleged petition since no copy has been uploaded and placed in the court file and also upon checking the CTS. The objection is upheld.

The court finds further that the order of the court enjoined the Respondents from proceeding to transfer the Petitioner to Turkana pending the hearing and determination of the notice of motion.

The matter of subsequent dismissal was not canvassed by the court at all at the *ex parte* stage and thus the interim orders did not stop any subsequent disciplinary hearing which led to dismissal of the applicant as

seen from the supplementary affidavit and submissions by the Applicant himself.

It would appear that even if a petition had been filed on 14th February 2025, as the Applicant asserts, the same has been overtaken by events.

The Applicant no doubt has opportunity to bring before the court if he desires a claim addressing the new development in the matter.

Accordingly, the petition and application dated 14th February 2025 are struck out for having been filed prematurely and for failure to file a petition and the application for contempt is dismissed for lack of sufficient prove as it is required in contempt of court applications.

No order as to costs.

Dated at Nairobi this **30th Day of October 2025.**

Mathews Nduma
JUDGE

Appearance:

Applicant in person

Ms. Aluoch for the Respondent

Mr. Kuone for 1st Interested Party.

Mr. Kemboi – Court Assistant