



**Oyoko v Kenya Revenue Authority (Cause E052 of 2025)
[2025] KEELRC 2965 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2965 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E052 OF 2025
JK GAKERI, J
OCTOBER 30, 2025**

BETWEEN

DANIEL OKONDA OYOKO CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

1. The claimant commenced the instant suit vide a statement of claim dated 11th June, 2025 filed on 23rd June 2025 seeking various reliefs namely; salary in lieu of notice, unpaid salary for June 2024, damages for unfair termination, service pay, house allowance for June 2024, transport allowance for June, 2024, unremitted NSSF for June 2024, total Kshs.3,984.000.00, general damages for breach of contract, costs of the suit, interest and any other relief the court deemed just and fit to grant.
2. The respondent filed a response on 22nd September, 2025 but had previously filed a Notice of Preliminary Objection dated 19th September, 2025, the subject matter of this ruling.
3. The respondent seeks the dismissal of the claimant's suit on the grounds that:
 1. The proceedings were fatally defective for offending the provisions of Section 74 of the *Public Service Commission Act* and Regulation 31 of the Public Service Commission Regulations 2005.
 2. The claimant had failed to invoke and/or exhaust alternative dispute resolution mechanisms prescribed by statute.
 3. Jurisdiction is conferred by statute.
4. By a Replying Affidavit sworn by the claimant on 21st October 2025, the affiant deponed that the provisions of Section 74(1) of the *Public Service Commission Act* were not mandatory as the provision



uses the phrase “may appeal to the commission” which connoted permissiveness and thus did not apply to the instant case.

5. The affiant further deponed that the court had jurisdiction to hear and determine his case for unfair termination of employment by the respondent and sought dismissal of the Preliminary Objection with costs.

Respondent’s submissions

6. Counsel for the respondent placed reliance on the decisions in *Mutanga Tea and Coffee Co. Ltd V Shikara Ltd & another* [2015] eKLR, *Secretary County Public Service board V Hulbai Gadi Abdille* [2017] eKLR, *Singh Chania V Diamond Trust Bank (Kenya) Ltd & another* [2020] eKLR, *Kenya Union of Domestic Hotels, Education Institutions and Allied Workers V Salaries and Remuneration Commission* [2014] eKLR and *Speaker of the National Assembly V Njenga Karume* [1992] KLR 21, to submit that where a dispute resolution mechanism outside the court exists, it ought to be exhausted before the court’s jurisdiction was invoked in accord with the doctrine of exhaustion.
7. Counsel urged that since the *Public Service Commission Act* provided a specific dispute resolution mechanism, it ought to take precedence and Section 2 of the Act defined a public body to include statutory public bodies and the respondent was bound by the general provisions of the Act by dint of Section 3 of the Act which define the scope and application of the Act.
8. Counsel urged that Section 74(1) of the *Public Service Commission Act* had no exceptions to the exhaustion doctrine, the claimant was not properly below the court.

Claimant’s submissions

9. Counsel urged that since the provisions of Section 74(1) of the *Public Service Commission Act* used the phrase “may appeal to the Commission”, which suggested permissive choice and some degree of discretion, which meant it was not compulsory for a party to invoke the dispute resolution mechanism before filing a suit.
10. According to counsel, Section 74(1) of the Act made it optional for aggrieved and affected parties to appeal to the commission.
11. Counsel submitted that alternative dispute resolution mechanism could be resorted to at any stage if the court so directed. Counsel further submitted that the court had jurisdiction to hear and determine the suit before it, citing the sentiments of the Supreme Court in *Samuel Kamau Macharia & another V Kenya Commercial Bank & 2 others* [2012] eKLR.
12. Finally, counsel contended that while Section 87(2) of the *Public Service Commission Act* made it obligatory for County Public Officers to appeal to the Public Service Commission, no provision of the Act mandated public officers to do so compulsorily and the contention that the court had no jurisdiction in this matter lacked a basis.

Analysis and determination

13. As to whether the respondent’s Notice of Preliminary Objection meets the threshold in *Mukisa Biscuit Manufacturing Co. Ltd V West Ends Distributors Ltd* [1969].
14. The respondent is challenging the court’s jurisdiction to hear and determine the claimant’s suit prior to invocation of other dispute resolution mechanism, principally, the filing an appeal before the Public Service Commission pursuant to the provisions of Section 74 of the *Public Service Commission Act*, which provide:



1. “Any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act may appeal to the Commission”.
15. In contradistinction with County Government Public Service, while Part XV of the Public Service, Commission Act under the title ‘Hearing and determination of appeals in respect of County Government Public Service’, is unambiguous on the subject, there are no equivalent provisions on public officers employed by the national government and other government bodies, including statutory corporations and public Universities.
16. Significantly, the jurisdiction of the Public Service Commission to hear and determine appeals from County Governments Public Service is a constitutional imperative under the provisions of Article 234(2)(i) of *the Constitution* of Kenya, which expressly mandates the Public Service Commission to hear and determine appeals in respect of County Governments Public Service.
17. *The Constitution* of Kenya has no specific provision on the power of the Public Service Commission to hear and determine appeals from other public officers.
18. Arguably, although Article 234(2)(j) of *the Constitution* mandate the Public Service Commission to perform any other function and exercise any other powers conferred by national legislation, the *Public Service Commission Act* has no provision conferring upon the Public Service Commission jurisdiction to hear and determine appeals from other aggrieved and affected Public Officers and Section 74(1) of the Act, whose phraseology differs from the provisions under Part XV of the *Public Service Commission Act*. By making the Public Service Commission the subject, Section 74(1) constitutes the dissatisfied or affected party the subject, which would appear to suggest that the framers of *the Constitution* of Kenya made a conscious decision to make the aggrieved or affected party the decision maker on how to proceed, which accounts for the phrase “may appeal to the commission”.
19. A provision such as “The Commission shall hear and determine appeals from” would have had a different orientation and outcome.
20. As contended by the claimant’s counsel, the term “may” ordinarily means to be permitted to or a possibility. It suggests that the subject is the ultimate maker of the decision.
21. Consistent with the framers of *the Constitution* of Kenya, which does not expressly confer upon the Public service Commission power to hear and determine appeals from public officer other than those in the County Government Public Service, the drafters of the *Public Service Commission Act* did not, in the court’s view, intend to make it obligatory for other public service employees to appeal to the Public Service Commission before invoking the court’s jurisdiction and indeed many public officers in the national government and parastatals invoke the court’s jurisdiction as the first port of call, which respondents seldom contest.
22. In *James Tinai Murete & others V County Government of Kajiado & another: Nailantei Supeyo & 19 others (Interested Parties)* [2023] eKLR Mumbi Ngugi J (as she then was) held as follows:

...Read as a whole the provisions of Section 77 of the *County Governments Act* evince an intention to have all disputes arising out of appointments by the County Public Service Boards dealt with by the Public Service Commission hence its grant to the Commission of the mandate in mandatory terms by providing that the Commission shall entertain appeals on any decision relating to employment of a person in a County Government including a decision in respect of...”



23. The *Public Service Commission Act* has no provision similar or identical to Section 77(2) of the *County Governments Act* on Public officers serving in the national government or other statutory bodies or corporations.
24. Without such a provision, the progressive reasoning of Mumbi Ngugi J (as she then was) in *James Tinai Murete & Others V Kajiado County Government of Kajiado & others* (supra) is inapplicable to the instance case.
25. The court is in agreement with the submissions of the applicant’s counsel that the doctrine of exhaustion requires a party to exhaust all administrative remedies at his or her disposal before invoking the court’s jurisdiction as held in *Republic V Commissioner General, Kenya Revenue Authority Ex Parte Sanofi Aventis Ltd* [2017] eKLR, *Speaker of National Assembly V Karume* (supra), *Godfrey Muthinja Kabiru & 2 others V Samuel Munga Henry & 178 others* [2015] eKLR, *NGO’s Co-ordination Board V EG & 4 others* (katiba Institute (Amicus curie) [2023] KESC 17 (KLR) and *William Odhiambo Ramogi & 3 others V Attorney General & 4 others; Muslim for Human Rights & 2 others* (Interested Parties) [2020] eKLR.
26. However, where the parent statute accords aggrieved and affected persons the option on whether or not to invoke the internal dispute resolution mechanism, the intention of the legislature is clearly manifest and an unwilling party ought not to be compelled to subject himself or herself to such dispute resolution mechanism where other options are not closed.
27. In the instant case, the claimant elected to file a court action and it would be unfair to backpedal the process more than four (4) months after the suit was filed.
28. Briefly on jurisdiction, the court is in agreement with the claimant’s counsel, as held by the Supreme court in *Samuel Kamau Macharia & another V Kenya Commercial Bank & others* (supra), that a court’s jurisdiction flows from *the Constitution* or legislation or both and a court of law cannot arrogate unto itself jurisdiction beyond what is conferred upon it by law.
29. The Employment and Labour Relations Court derives its jurisdiction from Article 162(2)(a) of *the Constitution* of Kenya and Section 12 of the *Employment and Labour Relations Court Act*.
30. In addition, the Employment and Labour Relations Court has jurisdiction to enforce labour rights under Article 41 of *the Constitution* of Kenya and interpret *the Constitution* and rights and fundamental freedoms incidental to the exercise of its jurisdiction over matters germane to employment and labour relations as held in *United States International University (USIU) V Attorney General* [2012] eKLR.
31. See also in this regard *Daniel N. Mugendi V Kenyatta University & 3 others* [2013] eKLR and *Kenya Tea Growers Association & 2 others V National Social Security Fund and 13 others* [2023] KESC 63 (KLR)
32. Finally, the sentiments of the Court of Appeal in *Geoffrey Muthinja & 2 Others V Samuel Muguna Henry & 1756 others* (supra) are instructive.
33. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside court...”
34. In conclusion and based on the foregoing, the court finds that the applicant has failed to demonstrate that the provisions of Section 74(1) of the *Public Service Commission Act* obligated the respondent to lodge an appeal with the Public Service Commission before invoking the jurisdiction of this court.



35. In the court's view, he had the option to do so but elected not to for any number of reasons.
36. Further, the court finds that it has jurisdiction to hear and determine the instant suit.
37. In the upshot, the respondent's Notice of Preliminary Objection dated 19th September, 2025 is devoid of merit and it is accordingly dismissed with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 30TH DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

