

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NYERI**

**CONSTITUTIONAL PETITION NO E004 OF 2025**

**IN THE MATTER OF ARTICLES 22 AND 23(1) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION AND CONTRAVENTION OF ARTICLES  
3, 10, 19, 20, 21, 22, 23, 24, 25, 27, 28, 40, 41, 47, 50, 51 AND 232 OF THE  
CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT**

**BETWEEN**

**PATRICK KAMARU MWANGI.....PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF NYERI.....1<sup>ST</sup> RESPONDENT**

**THE PUBLIC SERVICE COMMISSION.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD, NYERI COUNTY.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling dispenses with the Preliminary Objection raised by the 1<sup>st</sup> and 4<sup>th</sup> Respondents, at paragraphs 15 and 17 of the replying affidavit sworn on 23<sup>rd</sup> May 2025.

2. The substance of the objection is that this Court lacks jurisdiction to hear and determine the matter as the Constitution, the County Government Act and the Public Service Commission Act provide that any dispute arising from county public service shall be heard and determined by the Public Service Commission, with finality.
3. The Respondents plead that the Petitioner's case was comprehensively heard and determined by the Public Service Commission and the Petitioner is barred from filing a fresh suit on the same facts.
4. The Respondents add that these proceedings have been brought outside the statutory limitation period provided under Section 90 of the Employment Act.
5. The Respondents further state that the prayers sought in the Petition cannot be granted as there are no constitutional issues raised by the Petitioner.
6. In their submissions dated 14<sup>th</sup> October 2025, the Respondents state that the suit is statute barred by dint of Section 90 of the Employment Act. They point out that the Petitioner was dismissed by the Nyeri County Public Service Board as per letter dated 19<sup>th</sup> September 2019. They therefore contend that the Petition filed on 21<sup>st</sup> March 2025, more than 5 years after dismissal, is outside the limitation period.
7. The Respondents rely on the decision in ***Stanley Miano v County Government of Nyeri [2022] KEELRC 13261 (KLR)*** where it was held that a suit brought after the lapse of the statutory period of three years cannot be sustained, as the Court lacks jurisdiction to entertain it.

8. The Respondents further submit that the Court lacks jurisdiction to hear and determine this Petition as the issues raised therein are *res judicata*, having been heard and determined by the Public Service Commission with finality. They point out that Section 77 of the County Governments Act provides the Public Service Commission as the avenue for appeal by any party aggrieved by the decision of the County Public Service Board.
9. It is submitted that the Petitioner appealed the decision of the County Public Service Board to the Public Service Commission, and his appeal was dismissed vide a letter dated 13<sup>th</sup> October 2021. Thereafter, the Petitioner applied for review of the decision of the Public Service Commission as per Section 77(6) of the County Governments Act, but the application for review was also dismissed.
10. In urging the issue of *res judicata*, the Respondents rely on the decision in ***Sweta v County Government of Kakamega & 3 others [2024] KEELRC 1554 (KLR)*** where it was held that once the Public Service Commission has exercised its statutory mandate and determined a matter with finality, the matter becomes *res judicata*.
11. The law on *res judicata* is codified by Section 7 of the Civil Procedure Act as follows:
  7. ***No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.***

12. The Respondents' case is that the issues raised by the Petitioner in this Petition are *res judicata* because they were exhaustively determined by the Public Service Commission. I disagree; the operative phrase in Section 7 of the Civil Procedure Act is '*competent court*'.
13. I do not think a body such as the Public Service Commission, which exercises only quasi-judicial power qualifies as a '*competent court*' as contemplated under Section 7 of the Civil Procedure Act.
14. At any rate, the law granting quasi-judicial power to the Public Service Commission does not contemplate a situation where decisions by the Commission are insulated from scrutiny by the Court.
15. In his submissions dated 5<sup>th</sup> November 2025, the Petitioner contends that by his Petition, he seeks enforcement of rights and freedoms guaranteed under the Constitution. He complains that the conduct of the disciplinary proceedings leading to the termination of his employment violated his right to fair administrative action.
16. Rule 56 of the Employment and Labour Relations Court (Procedure) Rules, 2024, recognises the place of alternative dispute resolution, subject to the following safeguards at Sub-rule 5:
- (5) Where the Constitution, a written law, collective bargaining agreement, contract of service, policy or other instrument provides for alternative dispute resolution mechanisms-***
- (a) a person being a party to a dispute may file a suit and seek appropriate interlocutory relief pending exhaustion of such alternative dispute resolution mechanisms or pending determination of the suit;***

**(b) want of exhaustion of such alternative dispute resolution mechanism shall not operate as a bar to a suit for application for interim orders or alleging unconstitutionality or unlawfulness of the action, omission, decision or other matter in dispute pending such exhaustion; and**

**(c) a suit filed prior to exhaustion of such alternative dispute resolution mechanism may be stayed and not struck out on account of such exhaustion.**

17. In his Petition, the Petitioner indicts not only his former employer, but also the Public Service Commission. The issues raised in this dispute fall squarely within the jurisdiction of this Court.

18. Regarding the question whether the matter is statute barred, the Petitioner submits that the law on limitation of actions cannot be used to shield a party from claims on enforcement of fundamental rights and freedoms protected under the Bill of Rights. In urging his position in this regard, the Petitioner relies on the Court of Appeal decision in **Janmohammed & another v Lagat & 4 others [2022] KECA 720 (KLR)**.

19. To my mind, the issue of limitation in this case is not one that can be determined *in limine*. I say so because the mode of pleading and the time taken at the quasi-judicial level are matters on which the Court will need to take argument from the parties.

20. Overall, I find and determine that the Preliminary Objection raised by the Respondents is not well taken and proceed to overrule it with costs in the Petition.

21. Orders accordingly.

**DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY NOVEMBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. King'ori for the Petitioner

Mr. Njomo for the 1<sup>st</sup> and 4<sup>th</sup> Respondents

ORIGINAL