

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

**AT NYERI**

**CAUSE NO E022 OF 2025**

**JOHN MAINA KARINA.....CLAIMANT**

**VS**

**COUNTY GOVERNMENT OF NYERI.....RESPONDENT**

**R U L I N G**

1. This ruling determines the Respondent's Preliminary Objection raised by notice dated 22<sup>nd</sup> July 2025. The objection is premised on the following grounds:

- a) That the suit against the Respondent is in contravention of Section 85 of the Public Service Commission Act and Section 77 of the County Governments Act;
- b) That the Claimant has not exhausted the dispute resolution mechanism provided under the Public Service Commission Act and the County Governments Act, before approaching this Court, thereby rendering the suit premature;
- c) That the suit is a non-starter and is bad in law;
- d) That the suit ought to be struck out *ex debito justitiae*.

2. The parties urged their respective positions by way of written submissions. In its submissions dated 21<sup>st</sup> October 2025, the Respondent cites Section 77(1) and (2) of the County Governments Act, which provides as follows:

**(1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in a county government in exercise or purported exercise of disciplinary control against any public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against that 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 an appeal in that regard.**

3. The Respondent further relies on Section 85 of the Public Service Commission Act, which provides that:

**85. Appeal from County Government Public Service**

**The Commission shall, in order to discharge its mandate under Article 234(2)(i) of the Constitution, hear and determine appeals in respect of**

*any decision relating to engagement of any 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 forms of removal from the public 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.*

4. The Respondents submit that the provisions of Section 77(1) and (2) of the County Governments Act, read together with Section 85 of the Public Service Commission Act, establish a mandatory dispute resolution mechanism for any person aggrieved by decisions relating to employment or disciplinary control within County Governments.
5. The Respondents stress that under the doctrine of exhaustion, where a statute provides for a specific dispute resolution mechanism, parties are required to utilise that mechanism fully before approaching the courts.
6. In advancing their argument, the Respondents relied on the decision in ***Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] KECA 643 (KLR)*** where the Court of Appeal affirmed that Section 77 of the County Governments Act provides both first instance and appellate fora for resolution of disputes arising from County Governments.

7. On his part, the Claimant submits that Section 77 of the County Governments Act and Section 85 of the Public Service Commission Act cannot oust the jurisdiction of this Court to entertain his claim.

8. 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.***

9. The foregoing provision allows for stay of court proceedings brought before exhaustion of established alternative dispute mechanism.

10. It is not in dispute that the Claimant in this case, has not exhausted the dispute resolution mechanism provided under the County Governments Act and the Public Service Commission Act.

11. In the circumstances, I will invoke Rule 56(5)(c) of the Employment and Labour Relations Court (Procedure) Rules and thereby stay these proceedings pending exhaustion of the dispute resolution mechanism provided under Section 77 of the County Governments Act and Section 85 of the Public Service Commission Act.

12. I will make no order for costs at this stage.

13. Orders accordingly.

**DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY NOVEMBER 2025**

**LINNET NDOLO**  
**JUDGE**

Appearance:

Mr. Makura for the Claimant

Mr. Amir for the Respondent