

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
PETITION NUMBER E004 OF 2024**

BETWEEN

- 1. ANDREW NYABUTO OMONDI
- 2. BENSON MUTOLE LUGAIRO
- 3. SAMUEL MUCHAI KARANJA
- 4. AMOS KIMUTAI KERICH
- 5. EUNICE NJERI KIONGO
- 6. MERCY WANJA WATHUA
- 7. SIMON NGATIA NDUNG’U
- 8. AMOS KPCHIRCHIR BIWOTT
- 9. MARY WANGARI MUGUNA
- 10.PETER MURIUKI KARIUKI
- 11.LAWRENCE MUTUMA GITUMA
- 12.JOSIAH KINYUA MUNA
- 13.SYLVIA WANGUI MAINA
- 14.SAMMY CHERUYIOT LANGAT
- 15.SAMUEL TOO KETER
- 16.PAUL KIPTOO TOREREI
- 17.HILARY KOECH KIPKORIR.....PETITIONERS

VERSUS

- 1. COUNTY GOVERNMENT OF NAKURU
- 2. PUBLIC SERVICE BOARD OF NAKURURESPONDENTS

RULING

- 1. There are 17 Petitioners in this Petition.
- 2. For some unclear reasons, the Petitioners’ Advocates list 21 Petitioners, in certain documents on record, such as their supplementary affidavit, sworn on 30th October 2025, and affidavit sworn by their Advocate on 28th October 2025.

3. The Petitioners were employed by the Respondents on various dates, and in various county public service jobs, such as garden assistants, communication officers, statisticians, cooks, drivers, cleaners and security wardens.
4. Their grievance is that upon the election of a new County Governor in the year 2022, they were informed that their contracts had been terminated, effective 11th October 2022. They were issued letters of termination dated 7th October 2022.
5. They petition the Court to find that: termination was unfair and unlawful under the Employment Act; it was in violation of the Fair Administrative Action Act; and their constitutional rights under various Articles of the Constitution were violated.
6. They seek statutory and constitutional remedies, including notice pay; annual leave pay; salary for days worked in their last month of service; salary for remainder of their contractual periods; gratuity; compensation for unfair termination; general and aggravated damages for constitutional violations; and that, they are issued certificates of service.
7. The Respondents entered appearance, and responded through an affidavit sworn by Secretary to the 2nd Respondent, Joyce N. Ndegwa, on 19th March 2024. They filed a notice of preliminary objection dated 8th March 2024, contesting the jurisdiction of the Court.

8. The specific grounds are that: -
- a. The Petition contravenes Article 234[2] of the Constitution.
 - b. It contravenes Section 77 of the County Governments Act.
 - c. It contravenes Section 87[2] of the Public Service Commission Act.
 - d. It contravenes the Public Service Commission [County Appeals Procedures] Regulations, 2022.
 - e. Petitioners have not exhausted dispute resolution mechanism provided under the law.
 - f. The Court lacks jurisdiction.
9. Encountered with the preliminary objection, the Petitioners filed an application dated 17th July 2024, asking the Court to stay its proceedings, to allow them exhaust the appeal procedure, under the Public Service Commission.
10. Parties agreed that the objection and the application are considered and determined through the affidavits and submissions on record. They confirmed filing and exchange of submissions at the last mention before the Court, on 31st October 2025.

The Court Finds: -

11. There is a catena of judicial authorities to sustain the preliminary objection.
12. These include: E&LRC in **Mohammed v. County Secretary, Nakuru & 3 Others; Kiprono [Interested Party] [2025] KEELRC 2535 [KLR]; Republic v. Kakamega County Assembly Service Board; Simwa & Another [Ex-Parte Applicants]; Akosi [Interested Party] [2023] KEELRC 513 [KLR]; Oliver Mukhebi & 28 Others v. County Public Service Board of Bungoma & Another [2022] e-KLR; Maina v. County Government of Nakuru [2024] KEELRC 503 [KLR]; and, Ojeyo & 5 Others v. County Government of Homabay & 3 Others [2023] KEELRC 1832 [KLR].**
13. These E&LRC decisions, have anchorage in Court of Appeal decision, **Secretary Wajir County Public Service Board v. Hulbai Gedi Abdille [2017] e-KLR**, where it was stated that, a party cannot bypass the provision of Section 77 of the County Governments Act, and come to Court by way of a Petition.
14. Section 77 [1] of the County Governments Act states: -

“ 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”
15. Section 77 [5] requires that persons who are dissatisfied or affected by decisions of the Public Service Commission, may apply for review of the decision to the Public Service Commission.

16. Section 85 of the Public Service Commission Act states that: -

“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...”

17. Section 87 [2] completely deprives Courts primary jurisdiction on the subject stating: -

“ A person shall not file any legal proceedings in any Court 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.”

18. Like the County Governments Act, the Public Service Commission Act, stipulates under Section 88, that persons who are dissatisfied or affected by the decision of the Public Service Commission on appeal, may apply for review of the decision to the Public Service Commission.

19. Section 89 [1] states that: -

“ Any person who is affected by the decision of the Commission made under this part, may file the decision for enforcement by the Employment and Labour Relations Court, provided under Article 162 [2] [a] of the Constitution.”

20. Rule 69 [1] of the Employment & Labour Relations Court Rules, 2025, enables Parties with awards or lawful decisions, to seek enforcement from the Court, through miscellaneous applications.
21. The jurisdiction of this Court is limited to enforcement proceedings, under Section 89 of the Public Service Commission Act.
22. The Public Service Commission [County Appeals Procedure] Regulations, Legal Notice No. 92 of 2022, have elaborate procedures on appeal.
23. Rule 9 allows the Public Service Commission to hear and determine appeals relating to a wide range of issues, including issues under Articles 10 and 232 of the Constitution.
24. There is therefore, no reason for the Petitioners to approach this Court on matters that are appealable in, and reviewable by, the Public Service Commission.
25. The Court is convinced that it does not have primary jurisdiction in this Petition. It is purposeless to stay proceedings, in a matter in which the Court lacks primary jurisdiction.
26. Moreover, the Court has no control over the process at the Public Service Commission, and cannot influence how long that process takes. To stay proceedings indefinitely would have serious constraint, on the Court's ability to manage its caseload.

27. The Public Service Commission Act specifically states that, “ *a person shall not file any legal proceedings in any Court...*” The Court cannot stay proceedings which were filed contrary to this statutory prohibition. At the time such proceedings are initiated, the Court in which they are initiated, does not have jurisdiction over the subject matter. An order of stay of proceedings cannot issue, without jurisdiction.

28. Rule 56 [5] [c] of the E&LRC [Procedure] Rules, 2024, which states that a matter may be stayed, and not struck out, for non-exhaustion of alternative dispute resolution mechanism, is inconsistent with Section 87 [2] of the Public Service Commission Act. It is a curious rule, an innovation, which appears to be intended, to limit a Judge’s mandate and discretion, on disposal of suits, and in management of cases. It appears aimed at sidestepping substantive laws. Like other additions to the Rules, it is an attempt at broadening the jurisdiction of the Court, where there is no jurisdiction. The Court cannot stay proceedings which should not have been initiated before it, in the first place.

IT IS ORDERED: -

- a. The application by the Petitioners for stay of the proceedings is declined.***
- b. The preliminary objection is sustained and the Petition is struck out.***

c. The Petitioners shall pursue their appeal at the Public Service Commission, and may return to this Court for enforcement of the decision of the Public Service Commission.

d. No order on the costs.

Dated, signed and delivered electronically at Nakuru, pursuant to Rule 68 [5] of the E&LRC [Procedure] Rules, 2024, this 19th day of December, 2025.

James Rika
Judge

