



**Bonyo v Governor County Government of Homa Bay & 3 others (Cause E019 of 2025) [2026] KEELRC 154 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 154 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
CAUSE E019 OF 2025  
NZIOKI WA MAKAU, J  
JANUARY 29, 2026**

**BETWEEN**

**RICHARD OCHIENG BONYO ..... CLAIMANT**

**AND**

**THE GOVERNOR COUNTY GOVERNMENT OF HOMA BAY ..... 1<sup>ST</sup> RESPONDENT**

**HOMA BAY COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY SECRETARY/HEAD OF PUBLIC SERVICE HOMA BAY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY DIRECTOR OF HUMAN RESOURCES HOMA BAY COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Claimant instituted this suit through a memorandum of claim dated 31<sup>st</sup> March 2023 and filed on 18<sup>th</sup> May 2023. He alleges withholding of his terminal benefits, non-remittance of monthly NSSF contributions for the period between 8<sup>th</sup> August 2013 and 30<sup>th</sup> September 2022, and violation of his right to fair labour practices contrary to Article 41 of *the Constitution*.
2. In response, the Respondents raised a Preliminary Objection dated 22<sup>nd</sup> September 2025, contending that the suit is incompetent and fatally defective. They argue, first, that this Court lacks jurisdiction to entertain the matter. Secondly, they contend that the suit is frivolous, an abuse of the court process, made in bad faith, contrary to public interest, and amounts to an attempt to circumvent established statutory procedures. Thirdly, they assert that the reliefs sought cannot be granted as this Court lacks jurisdiction under section 87(2) of the *Public Service Commission Act*. Further, they maintain that there exist clear statutory mechanisms for handling complaints by county government employees under Article 234(2)(i) of *the Constitution*, section 77 of the *County Governments Act* and section 87(2) of



the *Public Service Commission Act*, which the Claimant failed to invoke. They also fault the Claimant for not demonstrating compliance with alternative dispute resolution mechanisms provided in law. Consequently, they submit that the substratum of the suit is incompetent, incurably defective and should be struck out with costs.

3. The Preliminary Objection was canvassed by way of written submissions.

### **Respondents' Submissions**

4. The Respondents identify the following issues for determination:
  - a. Whether this court has jurisdiction to hear and determine the suit;
  - b. Whether the claim relating to gratuity falls within the jurisdiction of the County Public Service Board and the Public Service Commission;
  - c. Whether the claim discloses a reasonable cause of action or constitutes an abuse of court process; and
  - d. Whether the Claimant will suffer prejudice.
5. On the question of jurisdiction, the Respondents submit that the Claimant failed to comply with Article 234(2)(i) of *the Constitution*, section 77(1) of the *County Governments Act* and section 87(2) of the *Public Service Commission Act*. They assert that the appellate and dispute resolution framework established under these provisions is mandatory and must be exhausted before invoking the jurisdiction of this Court. In support of this position, reliance is placed on Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR for the proposition that jurisdiction is foundational and without it a court must down its tools. They further rely on Speaker of the National Assembly v Njenga Karume [1992] KLR 21, in which it was held that where a clear statutory or constitutional procedure exists, it must be strictly followed. The Respondents assert that absent exceptional circumstances justifying departure from the exhaustion doctrine, the present suit was prematurely filed.
6. With respect to the claim for gratuity and terminal dues, the Respondents submit that such claims fall within the exclusive mandate of the County Public Service Board, with a right of appeal to the Public Service Commission. They cite section 59(1)(g) of the *County Governments Act*, which mandates the County Public Service Board to facilitate coherent and integrated human resource planning and budgeting for personnel emoluments, including pensions and gratuity. They assert that gratuity, being governed by the terms of engagement, ought to have been pursued before the relevant administrative bodies in the first instance.
7. On whether the claim discloses a reasonable cause of action, the Respondents submit that the suit is an abuse of the court process. They fault the Claimant for failing to avail a contract of service, demonstrate that he lodged a formal grievance before the County Public Service Board, or show compliance with the exhaustion doctrine. Reliance is placed on Republic v National Environment Management Authority (Ex parte Sound Equipment Ltd) [2011] eKLR, where it was held that failure to comply with statutory prerequisites renders a claim premature, vexatious and procedurally incompetent. The Respondents further submit that the suit is weakened by the Claimant's reliance on witnesses who had allegedly been dismissed for manipulation of payroll systems and the creation of ghost employees.
8. On the issue of prejudice, the Respondents submit that the Claimant will suffer none. They submit that the Claimant's predicament arises not from prejudice but from disregard of established procedures. They rely on Geoffrey Muthinja Kabiru & another v Samuel Muguna Henry & 1756 others [2015] eKLR, which cautioned against allowing litigants to bypass statutory dispute resolution



mechanisms without demonstrating that such mechanisms are unavailable, ineffective or unfair, as doing so would encourage forum shopping and undermine institutional mandates. They aver conversely that it is the integrity of the Court that would be prejudiced were it to assume jurisdiction reserved for the Public Service Commission.

9. In view of the foregoing, the Respondents urge the court to dismiss the suit with costs and grant any other equitable relief.

### **Claimant's Submissions**

10. While citing the Court of Appeal in *Public Service Commission & 4 Others v Cheruiyot & 20 others* [2020] KECA 15 (KLR) on jurisdiction of the Employment and Labour Relations Court, the Claimant submits that this court has jurisdiction under section 12 of the Employment and *Labour Relations Act*. He asserts that the doctrine of exhaustion ordinarily applies to petitions and Judicial Review matters and not to claims.
11. The Claimant further submits that he is no longer in active service with the County Government of Homa Bay and is not challenging any decision made by the County Government, thereby rendering the administrative appeal mechanisms inapplicable. On the issue of whether a demand or prior engagement was made before filing suit, the Claimant submits that this is a matter of evidence that cannot properly be determined at the stage of a Preliminary Objection. He urges the Court to assert its jurisdiction in claims relating to gratuity against county governments, citing *Peter Onyango v Homa Bay County Government* [2021] KEELRC 258 (KLR), *Odialo v County Government of Homa Bay* [2022] KEELRC 127666 (KLR) and *Ochura v County Government of Homa Bay* [2023] KEELRC 1767 (KLR), where the ELRC assumed jurisdiction and rendered determinations against the County Government. In conclusion, the Claimant urges the Court to dismiss the Preliminary Objection with costs.

### **Disposition**

12. The determination will hinge on whether the doctrine of exhaustion applies. In the case, the Claimant is seeking various relief for which he admits he never issued a demand. The Claimant is said to have not sought the interposition of the Public Service Commission as the matter in question falls within the docket of the County Public Service Boards. The claim for gratuity and terminal dues falls within the exclusive mandate of the County Public Service Board. There is a right of appeal to the Public Service Commission per section 59(1)(g) of the *County Governments Act*, which mandates the County Public Service Board to facilitate coherent and integrated human resource planning and budgeting for personnel emoluments, including pensions and gratuity. Since gratuity is governed by the terms of engagement, any claim for payment of the gratuity ought to have been pursued before the relevant administrative bodies in the first instance before the Court could be moved. This is the essence of the doctrine of exhaustion as Courts have stated without number that the course that does not have the Court as the first port of call when a clear administrative remedy exists is to be pursued. By coming to court the Claimant did not even bother to issue a demand letter instead rushing to file the case before this Court. That was not prudent. The Court allows the preliminary objection and stays the claim. The Claimant should pursue the remedies before moving the Court. Each party is to bear their own costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 29<sup>TH</sup> DAY OF JANUARY 2026**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

