



**Ngetich v Kirandich Water Company Limited (Cause E038 of 2025)
[2026] KEELRC 249 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 249 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E038 OF 2025
AN MWAURE, J
JANUARY 30, 2026**

BETWEEN

DAVID KIMURON NGETICH CLAIMANT

AND

KIRANDICH WATER COMPANY LIMITED RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection dated 27th June 2025 on the following grounds that:
 1. This Honourable Court lacks jurisdiction to entertain the Petition by virtue of section 77 of the County Government Act, and section 87(2) of the Public Service Act.
 2. The petition is fatally defective for misjoinder and non-joinder of parties
 3. The Petition is premature, an afterthought and an abuse of the court process.
2. Parties canvassed the preliminary objection by way of written submissions.

Respondent's submissions

3. The Respondent submitted that this Honourable court lacks jurisdiction under section 77 of the *County Governments Act*, 2012 and that the Claimant, as an employee of a county water services provider, is deemed a public officer subject to appeal procedures before the Public Service Commission. The Respondent relied on the case of Owners of the Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR) the court stated as follows:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no



power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given” See words and phrases legally defined-Volume 3: I-N page 113”

4. In *Samuel Kamau Macharia V Kenya Commercial Bank & 2 others* [2012] eKLR, the court emphasized that jurisdiction flows only from *the Constitution* or statute. The Respondent further relied on the case of *Abdikadir Suleiman v County Government of Isiolo & Another* [2015] eKLR and *Thuranira Salesio Mutuma V County Public Service Board & 2 others* [2019] eKLR, where courts held that section 77 of the *County Governments Act* requires appeals from county public service decisions to be lodged with the Public Service Commission before approaching the ELRC. Additionally, reference is made to Water Service Regulations, 2021, which classify employees of county water service providers as public officers.
5. On this basis, the Respondent submitted that the Claimant’s direct filing in court is premature, an abuse of process, and prays that the claim be dismissed with costs.

Claimant’s submissions

6. The Claimant submitted that the employment contract dated 27th April 2022, payslips, correspondence, and the dismissal letter of 2nd May 2025 show that the Claimant’s employer was the Respondent. Therefore, the preliminary objection is defective, as the County Public Service is not a party to this dispute.
7. The Claimant submitted that his appointment letter confirms that his employment was governed by the *Employment Act, 2007* and the Respondent’s Human Resource Policies and Procedures Manual (March 2021). This establishes that the Respondent is a distinct legal entity and the rightful employer, capable of being sued in its own name. Under section 2 of the *Employment Act*, an employer includes any person, corporation, or company that enters into a contract of service, and the Respondent clearly falls within this definition.
8. The Claimant relied on the case of *Kenya Ports Authority V Fadhil Juma Kisuwa* [2017] eKLR, where the Court affirmed that the proper party to a suit for unfair termination is the employer as per the contract of employment.



9. On jurisdiction, the Claimant contends that section 77 of the *County Governments Act*, 2012 and section 87(2) of the *Public Service Commission Act*, 2017 is misplaced since those provisions only apply to county public service employees, whereas he was employed by the Respondent, a limited liability company under the *Companies Act*, 2015. The Claimant relied on the cases of Josphat K. Serem V University of Eldoret & Another [2022] eKLR and Naomi Waithira Njoroge V Nakuru Water and Sanitation Services Company Ltd [2021] eKLR, the courts stated that water company employees fall outside the county public service. In Samuel Kamau Macharia V Kenya Commercial Bank & 2 others(supra), the court affirmed that jurisdiction flows from *the Constitution* and statute, with the ELRC vested under section 12(1)(a) of the ELRC Act.
10. On exhaustion, the Claimant further argued that he exhausted statutory conciliation under the *Employment Act*, 2007 and relied on the case of Geoffrey Muthinja V Samuel Henry Wambugu [2015] eKLR show the exhaustion doctrine is not absolute. The Claimant also submitted that the Respondent's advertisement of his position before the appeal period expired violated sections 41 and 45 of the *Employment Act* and Articles 41 and 47 of *the Constitution*, citing the case of Kenya Revenue Authority V Menginya Salim Murgani [2009] KLR 1 in support of that proposition.
11. Finally, the Claimant maintains that the Preliminary Objection does not raise pure points of law as required in Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd [1969] EA 696, and urges dismissal so the matter may proceed to full hearing.

Analysis and determination

12. The court has considered the preliminary objection together with the rival submissions; the issue for determination whether the preliminary objection is merited.
13. In Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd(supra) where Law JA stated as follows:

“...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.”

In the same case, Newbold, JA set out the remit upon which preliminary objections would be founded as follows;

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

14. Section 77 of the County Government Act provides as follows:

“(1) 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.



- (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 on appeal in that regard.
- (3) An appeal under subsection (1) shall be in writing and made within ninety days after the date of the decision, but the Commission may entertain an appeal later if, in the opinion of the Commission, the circumstances warrant it.
- (4) The Commission shall not entertain an appeal more than once in respect to the same decision.
- (5) Any person dissatisfied or affected by a decision made by the Commission on appeal in a decision made in a disciplinary case may apply for review and the Commission may admit the application if—
 - (a) The Commission is satisfied that there appear in the application new and material facts which might have affected its earlier decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given; or
 - (b) there is an error apparent on record of either decision.
 - (6) An application for review under subsection (5) shall be in writing and made within the time prescribed by the Commission in regulations governing disciplinary proceedings, but the commission may entertain an application for review later if, in the opinion of the Commission, the circumstances warrant it.”

15. Section 87(2) of the *Public Service Commission Act* also provides as follows:

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



16. Regulation 11(2) of the Water Services Regulations, 2021 provides as follows:
- “A person employed by a county water services provider shall be a public officer and subject to the laws governing the conduct of public officers.”
17. In this instant case, following the Water Act 2002 reforms, the entity was delinked from the National Water Conservation and Pipeline Corporation and placed under the Rift Valley Water Services Board. On 1st July 2017, after receiving a certificate of operation from the Water Services Regulatory Board (WASREB) on 29th June 2017, it officially transitioned from the Rift Valley Water Services Board and assumed management of the Kabarnet Water Supply, now the Respondent, which the Rift Valley Water Services Board had previously operated as a service provider.
18. The Claimant was employed by the Respondent on 2nd May 2022 as the Technical Manager, and it is alleged that he was unfairly terminated as he was not accorded a proper hearing. The Respondent, on the other hand, argued that the Claimant did not exhaust the mechanism provided for when it comes to appeals under the County Government Act.
19. The court is of the view that the Claimant is indeed a public officer since he was employed by the Respondent, being a county water services provider in Baringo County. The court however has pains takingly considered the reason raised to support the application for a preliminary objection. The same as earlier stated as premised on Section 77 of the County Government Act.
20. In *Wajir Wasco Limited alias Wajir Water & Sewerage Company & another v Mohamed & 2 Others* [2024] KECA 937 (KLR), the Court of Appeal held that employees of water and sewerage companies are considered staff of the County Governments. Any human resource decisions affecting them must first be appealed before the Public Service Commission. Only after exhausting this procedure can they move to court, similar to other county government officers.
21. Furthermore, the court of Appeal in particular in the above case *WAJIR WASCO*(Supra) stated:-
- “The learned Judge fell into error when he failed to appreciate the clear provision of the County Government Act, the Public Finance and Management Act and the Public Service Commission Act which clearly define a public entity.”

They further stated:-

“The learned Judge took a narrow view of what constitutes a country entity as defined under Section 2 of Public Finance Management Act.

Going further they stated: -

“The learned Judge fell into error by failing to interrogate the applicability of the doctrine of exhaustion to the dispute before him.

Finally, they stated: -

“The learned Judge failed to appreciate that the germane issue before him was basically an employer/employee dispute and the mere innovation of Articles of the Constitution did not bar him from addressing his mind to the question whether the respondents could get an adequate remedy at the forum provided under the statute. Consequently, the learned Judge erred in dismissing the Appellants preliminary objection.”



22. This court (ELRC) has been established under Article 162(2) of *the Constitution* Act as a specialised court which deals with employment relations matters, read together with section 12(1)(a) of the ELRC Act. If there is another provided alternative process to handle case the same must be exhausted first.
23. That notwithstanding as it was held in the same Court of Appeal case of Secretary County Public Service Board & Another v Hulbhai Gedi Abdille(2017) eKLR where there exists either sufficient and adequate pursue that avenue or forum to restore a dispute a party ought to process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other redress. In our view, the most suitable and appropriate recourse for the Respondent was “to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance.”
24. The claimant should have appealed to the Public Service Commission therefore as per Section 77 Of County Government Act and Section 87(2) of The *Public Service Commission Act* before filing the matter in court.
25. Having analysed the facts, the law and the legal principles laid down in decisional law the court finds the Applicant’s preliminary objection is merited and so is granted. The Claimant’s suit is therefore dismissed for offending the doctrine of exhaustion.
26. Each party will meet their respective costs of this application and of the main suit.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF JANUARY 2026.

ANNA NGIBUINI MWAURE

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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

