



REPUBLIC OF KENYA



**KENYA LAW**  
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**Torotoich v Kirandich Water Company Limited (Cause E037 of 2025)  
[2026] KEELRC 259 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 259 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E037 OF 2025  
J RIKA, J  
JANUARY 30, 2026**

**BETWEEN**

**JOHNSTONE KIMOSOP TOROTOICH ..... CLAIMANT**

**AND**

**KIRANDICH WATER COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant filed his Statement of Claim dated 10th June 2025.
2. He avers that he was employed by the Respondent as an accountant, and that he was unfairly dismissed by the Respondent on 2nd May 2025.
3. He seeks compensation for unfair termination, and a raft of terminal benefits, amounting to Kshs. 2,826,444.00.
4. The Respondent filed its Statement of Response and Counterclaim, dated 23rd October 2025. It also filed a Notice of Preliminary Objection, dated 7th October 2025.
5. The Preliminary Objection is the subject matter of today's Ruling.
6. The Objection is founded on Section 77 of the *County Governments Act*, 2012, which requires that disputes from the county public service, are heard by the Public Service Commission [PSC].
7. According to the Respondent, the Claimant was a public servant, within the county public service. Employees of water companies, are public servants, and Section 77 of the *County Governments Act*, is applicable to the Claimant.
8. The Court consequently, does not have jurisdiction over his dispute between the Claimant, and the Respondent, a water company owned by Baringo County Government.
9. The Respondent prays that the Claim is dismissed, with costs.



10. The Claimant submits that he was not an Employee of the County Government of Baringo. He was employed by the Respondent, a limited liability company, incorporated under the *Companies Act*. He was subject to the Respondent's Human Resource Policies and Procedures Manual, 2021. The Respondent is a separate legal entity from the County Government of Baringo. The Claimant underscores, through his submissions dated 5th November 2025, that the *County Governments Act* and the *Public Service Commission Act*, had no application to his service.
11. The Claimant states that the Court has jurisdiction on the dispute under Article 162 [2] of *the Constitution*, and is mandated under Article 159 [2][d], to administer justice without undue regard to technicalities.

**The Court Finds: -**

12. The principal issues raised preliminarily, are whether Employees of water services companies are public servants, and whether they are subject to the *County Governments Act* and the *Public Service Commission Act*?
13. Regulation 11 [2] of the Water Services Regulations, 2021, states that, a person employed by a water services provider, shall be a public officer, and subject to the laws governing the conduct of public officers.
14. The *County Governments Act* and the *Public Service Commission Act*, are some of the laws that apply to public servants.
15. The Respondent is a water services provider, servicing Baringo County. It is established by the County Government of Baringo, pursuant to Section 77 of the *Water Act*. This law allows County Governments to establish water services providers. A water services provider may be a public limited liability company established under the *Companies Act* [Cap 486] or other body providing water services, as may be approved by the Regulatory Board [WASREB].
16. Water companies so incorporated, operate through a Board of Directors. Their staff remuneration, is determined by the Board, in line with guidelines issued by the Salaries and Remuneration Commission.
17. Although incorporated as separate companies, water services companies within Counties, are public service vehicles, serving in the County Public Service. The Water Services Regulations [2025], Regulation 16, requires that the Board shall submit estimates to the County Executive Member, responsible for water services, for approval and inclusion of the annual budget of the County Government.
18. There are private water services utilities in the sector, such as Tatu Water and Sanitation Company [TATUWASCO], whose Employees are not public servants. The public entities such as the Respondent, should not be confused with their private utility counterparts, such as TATUWASCO. Employees of TATUWASCO are employed by a private utility. This is not the case with Employees of the Respondent.
19. It is clear that Employees of water service providers within the Counties, are public servants, subject to the laws applicable to public servants.
20. 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.”

21. The Respondent dismissed the Claimant, in exercise, or purported exercise of disciplinary control over him, and he ought to have appealed against that decision, to the PSC.
22. The mandatory nature of this requirement, is restated under the [Public Service Commission Act](#).
23. Section 85 of this Act states: -

“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...”
24. Section 87 [2], the PSC Act, completely takes away jurisdiction from the Courts, stating that no person shall file any legal proceedings in any Court with respect to matters within the jurisdiction of the PSC, unless the procedure provided under the part, has been exhausted.
25. Section 89 [1] of the PSC Act only confers the E&LRC with enforcement jurisdiction, once the matter has been finalized at the PSC.
26. The Court of Appeal upheld jurisdiction conferred on the PSC under the Section 77 [1] of the [County Governments Act](#), in Secretary, Wajir County Public Service Board v. Hulbal Gedi Abdille [2017] e-KLR. The decision has been applied by the E&LRC in Mohammed v County Secretary, Nakuru & 3 Others; Kiprono [Interested Party] [2025]KEERC 2535 [KLR]; and Oliver Mukhebi & 28 Others v. County Public Service Board of Bungoma & Another [2022] e-KLR.
27. At heart is an issue of jurisdiction of the Court, which is not an issue of procedural technicality, as the Claimant submits it to be.
28. The Court is persuaded that the Claimant was a public servant, as defined under the Water Services Regulations. He worked for a water services provider, owned by a county government. He was subject to the laws governing public servants, which include the [County Governments Act](#) and the [Public Service Commission Act](#). His dispute ought to be filed at the PSC, by way of an appeal.

it is ordered: -

- a. The Preliminary Objection is sustained, and the Claim declined for want of jurisdiction.
- b. The Counterclaim is declined.
- c. No order on the costs.
- d. The file is closed.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, UNDER RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 30TH JANUARY 2026.**

**JAMES RIKA**

**JUDGE**

