

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

**JUDICIAL REVIEW NO. E024 OF 2025**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**ONDIGI EDWARD VINCENT.....APPLICANT**  
**BEATRICE** **ACHIENG**  
**OWINO.....APPLICANT**  
**JACKLINE** **AKOTH**  
**AWUOR.....APPLICANT**  
**BALA** **THOMSON**  
**ODHIAMBO.....APPLICANT**  
**DORCAS KWAMBOKA MOKANA.....**  
**APPLICANT**  
**JOHN** **MAKORI**  
**ONDKIEKI.....APPLICANT**  
**WILFRED** **OMWENGA**  
**MIGIRO.....APPLICANT**  
**VERSUS**  
**THE COUNTY GOVERNMENT OF**  
**NYAMIRA.....1<sup>ST</sup>**  
**RESPONDENT**

**THE COUNTY SECRETARY & HEAD OF PUBLIC SERVICE, NYAMIRA COUNTY.....2<sup>ND</sup>**

**RESPONDENT**

**THE SECRETARY/CHIEF EXECUTIVE OFFICER, COUNTY PUBLIC SERVICE BOARD - NYAMIRA.....3<sup>RD</sup>**

**RESPONDENT**

**THE CHIEF OFFICER, FINANCE & PLANNING NYAMIRA.....4<sup>TH</sup>**

**RESPONDENT**

**RULING**

On 2<sup>nd</sup> December 2025 the applicant filed a Chamber Summons Application dated 2<sup>nd</sup> November 2025 under Certificate of Urgency seeking leave to apply for the Order/writ of *mandamus* to compel the respondent's jointly and severally to implement, obey, comply or execute the Orders, directions or decision of the Public Service Commission dated 27<sup>th</sup> August 2025.

The respondent's were served on 5<sup>th</sup> December 2025 as evidenced by the Affidavit of service sworn by Julius Otieno Raminya, a process server, on 9<sup>th</sup> December 2025 but did not respond or appear in court and the applicants were granted leave on 18<sup>th</sup> December 2025 to institute

Judicial Review proceedings against the Respondents for an Order of *mandamus* and the substantive motion was filed on 19<sup>th</sup> December 2025.

The applicants pray that:-

1. *An Order of mandamus compelling the respondents jointly and severally to implement, obey, execute and comply with the findings the Orders, direction and decisions of both the Public Service Commission dated and delivered on 27<sup>th</sup> August 2025 and the Nyamira County Public Service Board contained in a letter dated 15<sup>th</sup> January 2025 and referenced NCPSB/003-35/01/CH/Jg by paying and settling to the applicant's the arrears in salaries and allowances resulting from the unprocedural, unfair and improper demotion of the Applicant.*
2. *The Honourable Court sets a timeline within which the respondent shall be required to comply with, implement and or execute the findings, Orders, directions and decisions of the Public Service Commission and the Nyamira County Public Service Board.*
3. *The court makes such other or further Orders as it shall deem fit and expedient.*
4. *Costs of this application be provided for.*

The motion is based on the grounds that the applicants were all promoted to Job Groups N, H and K as applicable and their salaries were adjusted accordingly but were subsequently demoted and appealed to the Public Service Commission (herein after Commission) and the County Public Service Board and both delivered decisions on 28<sup>th</sup> August 2025 and 12<sup>th</sup> January 2025 and the applicants were reinstated to the Job Groups they had been promoted initially as per the payslips for October 2025 but the unpaid salaries from June 2024 and September 2025 was not paid.

That they are owed as follows:

1. Ondigi Edward Vincent Kshs.1,076,108.00
2. Beatrice Achieng Owino Kshs.261,200.00
3. Jackline Akoth Awuor Kshs.261,200.00
4. Bala Thomson Odhiambo Kshs.261,200.00
5. Dorcas Kwambok Mokano Kshs.261,200.00
6. John Makori Ondieki Kshs.465,804.00
7. Wilfred Omwenga Migiro Kshs.242,359.00

According to the applicants, the respondents failure and/or refusal to implement the decision of the Commission and the Nyamira County Public Service

Board precipitated the instant motion and the respondent would not suffer any prejudice if the Orders sought were granted.

When the matter came up for hearing on 18<sup>th</sup> December 2025, none of the parties was present and the court rescheduled the hearing to 29<sup>th</sup> January 2029 a the hearing notice was served upon the respondents via email dated 13<sup>th</sup> January 2026.

However, while hearing was slated for 29<sup>th</sup> January 2026, the hearing notice dated 14<sup>th</sup> January 2026 had a different hearing date, 28<sup>th</sup> January 2026 and the respondents did not appear on that particular date and had not responded by 29<sup>th</sup> January 2026.

The applicant's advocate opted not to file submissions. The motion was unopposed.

### **Analysis and determination**

It is common ground that the applicant's were and remain employees of the Nyamira County Government, the 1<sup>st</sup> respondent and it is not disputed that they were promoted and subsequently demoted and salaries reduced as evidenced by copies of pay slips on record.

Equally not in contest is the fact that the claimants appealed to the Public Service Commission which directed reinstatement to the positions held before the demotion without loss of salaries, allowances and benefits and although the applicants were reinstated the outstanding salaries and allowances were not paid.

Puzzlingly, the Supporting Affidavit sworn by John Makori ONdieki on 18<sup>th</sup> December 2025 lacked essential details on the dates the promotions took place for each applicant and when the demotion was effected, copies of letters on record notwithstanding.

This motion was filed a day after leave to commence judicial review proceedings was given.

The only issue for determination is whether the applicants have met the threshold for grant of the Order of *mandamus* against the respondents.

Before delving into whether the applicants has fulfilled the requirements for an Order of *mandamus* to issue, it is essential to determine the character of the decision,

Orders or directions sought to be enforced by the writ of *mandamus*.

Counsel for the parties were informed of the decision of the Commission vide letter dated 28<sup>th</sup> August 2025, one day after the decision was delivered.

The Public Service Commission derives its mandate to hear appeals from County Public Officers against their employers from the provisions of Article 234(2)(i) of the Constitution of Kenya which provides that:

**The commission shall hear and determine appeals in respect of County Government's Public Service.**

This provision is fortified by the provisions of section 77 of the County Governments Act and Part IV of the Public Service Commission Act.

When the commission hears and determines appeals filed by persons aggrieved by decisions or actions taken by a County Government, its organs or other persons, it is an integral part of the internal dispute resolution mechanisms under the doctrine of exhaustion and its decisions are not of enforcement analogous to court Orders for purposes of enforcement.

The decision requires adoption as an Order(s) of the court for purposes of enforceability.

Section 89 of the Public Service Commission Act entitled 'Enforcement of appeal decision provides:

- (1) 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 for under Article 162(2)(a) of the Constitution.**
- (2) Any person who refuses, fails or neglects to implement the Commission's decisions is liable to disciplinary action in accordance with the applicable laws including removal from office.**

The procedural aspects are set out by the provisions of Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024, which states:

- (1) Where parties have entered into a conciliation, negotiation or mediation agreement, or are bound by an arbitral award or a lawful decision reached in**

**Alternative Justice Systems, a party may file the award, decision or agreement.**

**(2) An application under sub-rule (1) shall be by way of a miscellaneous application instituted through a notice of motion supported by an affidavit exhibiting the award, decision or agreement together with all relevant documents.**

A perusal of the Supporting Affidavit sworn by Mr. John Makori Ondieki reveals that there was no reference to the decision of the Public Service Commission having been placed before the Employment and Labour Relations Court for adoption as an Order of the court prior to seeking leave to institute Judicial Review proceedings for *mandamus*.

Without having adopted the decision of the Public Service Commission dated 27<sup>th</sup> August 2025 as an Order of the Court, there is no decision before this court capable of being enforced by the Order of *mandamus* or any other Order.

Without a court decision, Order or judgment, there is no basis on which an anchor an inquiry as to whether the

applicants have made a case for grant of the Order of *mandamus* or any other Order(s) sought.

Similarly, it is trite law that enforcement of Orders against the National or County Governments is regulated by the provisions of Section 21 of the Government Proceedings Act which provides

**(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of**

**the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.**

**(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.**

**(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing, by the certificate to be due to him together with interest, if any, lawfully due thereon...**

**(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or**

**any Government department, or any officer of the Government as such, of any money or costs.**

**(5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.**

The provisions of Section 21 of the Government Proceedings Act, and which must be complied with before the Order of *mandamus* is sought, only apply in relation to court Orders and as adverted elsewhere in this ruling, the decision of the Public Service Commission sought to be enforced by *mandamus* is not a court Order and is thus unenforceable under the foregoing provisions.

Notably, compliance with the provisions of Section 89 of the Public Service Commission Act, Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024, and Section 21 of the Government Proceedings Act is essential as there is no other way of enforcing Orders against the Government be it national or County.

On *mandamus* generally, see in this regard **Republic V Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah** [2012] eKLR, **Republic V Principal Secretary, Ministry of Internal Security & another Ex Parte Schon Noorani & another** [2015] eKLR, **Republic V Attorney General & another Ex Parte Stephen Wanyeki Roki** [2016] eKLR, **Republic V Kenya National Examination Council Ex Parte Gathenji & 9 others** [1997] eKLR and **Republic Jomo Kenyatta University of Agriculture and Technology Ex Parte Elijah Kamau Mwangi** [2021] eKLR.

Having failed to demonstrate that the decision of the Public Service Commission was adopted as an Order of the court, for purposes of enforcement and a Certificate of Order Against the County Government of Nyamira obtained, it follows that the decision of the Public Service Commission dated 27<sup>th</sup> August is incapable of being enforced by way of *mandamus* or other Order.

The upshot of the foregoing is that the instant application is premature and is struck out with no Orders as to costs.

Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT  
KISUMU ON THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026.**

**DR. JACOB GAKERI  
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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**DR. JACOB GAKERI**  
**JUDGE**

ORIGINAL