



**Republic v County Government of Homabay & another; Otieno & 25 others (Ex parte Applicants)
(Judicial Review E021 of 2025) [2026] KEELRC 397 (KLR) (18 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 397 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E021 OF 2025
JK GAKERI, J
FEBRUARY 18, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF HOMABAY 1ST RESPONDENT

HOMA BAY COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

AND

DAVID OTIENO & 25 OTHERS & 25 OTHERS EX PARTE APPLICANT

RULING

1. The applicants filed the instant Notice of Motion on 30th November 2025 after being granted leave to commence Judicial Review proceedings against the respondent pursuant to an ex parte Chamber Summons application dated 25th September 2025 to which respondent did not respond service notwithstanding.
2. The Notice of Motion seeks Orders that:-
 1. An Order of Mandamus directed to the 1st and 2nd respondents to comply with the Order issued by the Public Service Commission on 19th December 2024 by inter alia reinstating the applicants without loss of benefits in default the 1st respondent be cited for contempt.
 2. An Order of Mandamus compelling the 1st and 2nd respondents to comply with Orders of the court issued by the Public Service Commission vide a Judgment dated 19th December 2024 directing the respondents to pay all the applicants their salaries and attendant benefits from the date they were stopped by dint of unlawful termination until payment in full.
 3. The court grants all necessary and consequential Orders/direction.



4. Costs of this application be provided for.
3. The Notice of Motion was expressed under Sections 8 and 9 of the *Law Reform Act* and Order 53 Rules 3(1) and (3) of the Civil Procedure rules and was supported by the grounds set out on its face, the statutory statement Verifying Affidavit and other annextures.
4. The applicants' case is that they were appointed on undisclosed diverse days into various stations within the County as Revenue Officers and despite rendering services, the 1st respondent did not pay their salaries and despite their incessant demands the 1st respondent rejected their services on 28th August 2023 directing them to regularise their employment status, a development the applicants deemed malicious, unjustified, illegal and void and appealed to the Public Service Commission in County Appeal No. E011 of 2024.
5. The Commission found the termination of employment unlawful, set the same aside and directed the respondents to reinstate the applicants back to service and pay all benefits from the date they were stopped till payment in full.
6. An application for review by the respondents dated 24th December 2024 was declined and the Judgment delivered on 19th December 2024 was upheld and despite service, the Judgment remained unimplemented necessitating the instant application.
7. After entering appearance on 3rd December 2025, the respondents subsequently filed a Notice of Preliminary Objection dated 3rd December 2025 urging that:
 1. The Motion was fatally defective and the ex parte applicants had no lawful cause against the respondents.
 2. The Orders sought could not be granted as the entire application dated 27th November 2025 was not properly before the court since the commission's decision had not been recognized or adopted as a Judgment of the court and decree extracted for enforcement against the respondents.
 3. The motion dated 27th November 2025 is statutorily barred under Order 53 Rule 2 of the Civil Procedure Rules.
 4. The application dated 2nd December 2025 was incompetent as it was filed on 2nd December 2025 one year after the Commission's decision rendered on 19th December 2024 offending Order 53 Rule 2 of the Civil Procedure Rules and Section 9(2) of the *Civil Procedure Act*.
 5. The substratum upon which the motion dated 27th November 2025 was premised is ipso facto incompetent and hopelessly defective and both the application and the entire suit ought to be struck out.
8. Directions on the filing and exchange of submissions on the Notice of Preliminary Objection were issued on 10th December 2025 and confirmed on 26th January 2026 that both parties had filed submissions.
9. On jurisdiction of the court to hear and determine the instant motion, counsel for the respondent cited the decisions in Owners of Motor Vessel "Lillian S" V Caltex Oil Kenya Ltd [1989] eKLR and Samuel Kamau Macharia & another V Kenya Commercial Bank & 2 others [2012] eKLR on the source of a court's jurisdiction and underscore the essence of jurisdiction.
10. On timing of the Notice of the Preliminary Objection, counsel urged that it had been raised at the onset of the motion.



11. As to whether the motion met the threshold of Judicial Review proceedings, reliance was placed on Republic V Chief Magistrate Milimani Commercial courts & 2 others Ex Parte Fredrick Bett [2022] eKLR on leave as ordained by Order 53 Rule I of the Civil Procedure Rules.
12. Counsel submitted that the reliefs sought could not issue because leave had not been obtained to institute Judicial Review proceedings citing the sentiments in Kambona V Cabinet Secretary Ministry of Health & another; Nguka & 5 Others (Interested Parties) 2025 KEHC 18659 (KLR) to urge that the applicant missed a step.
13. That the decision of the Public Service Commission had not been subjected to judicial scrutiny for enforceability by being adopted as an Order of the court.
14. Reliance was placed on Bernard Njoroge Kibaki t/a NjowaNjemu Enterprises V Equity Bank [2020] eKLR.

Respondent's submissions

15. As to whether the Preliminary Objection is merited, counsel urged that it was impossible to file the motion within 6 months on account of the review hearing and the applicants were bound by Section 87(2) of the [Public Service Commission Act](#).
16. Reliance was also placed on Section 9(2) of the [Fair Administrative Action Act](#) and decision in Republic V Public Service Commission & another: Kirinyaga Public Service Board Ex Parte [2023] KEERLC 3350 (KLR) to urge that the applicants were properly in court.
17. That failure to include the Order of adoption of the decision of the Commission by the court did not render the application defective.
18. That the respondent's Notice of Preliminary Objection did not qualify as a Preliminary Objection.

Analysis

19. The only issue for determination is whether the respondents Notice of Preliminary Objection is merited.
20. It is also essential to determine whether the Notice of Preliminary Objection meets the threshold of a Preliminary Objection as defined in Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd [1969] EA 696 as follows:

“... 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 point 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 to refer the dispute to arbitration”.

21. In G4S Security Services (K) Ltd V Joseph Kamau & 468 others [2018] eKLR, the Court of Appeal held:

“The test to be applied in determining whether the Preliminary Objection met the threshold as in the Mukisa Case (supra) which are whether the Preliminary Objection raises a pure point of law that there is a demonstration that all the facts pleaded by the other side are correct and that there is no fact that needs to be ascertained”.



22. From the record, the respondent had not disputed any fact as presented by the applicant in that the applicant filed an appeal before the Public Service Commission (hereinafter the Commission) as ordained by the provisions of *the Constitution* of Kenya, *County Governments Act* and the *Public Service Commission Act* and the Commission delivered its decision on 19th December 2024 and the respondent's application for review dated 24th December 2024 was disallowed and the applicants were seeking enforcement of the Commission's decision by way of an Order of mandamus after the respondents failed and/or refused to honour the decision.
23. The respondent's Notice of Preliminary Objection raises two salient points, namely; the decision of the Commission had not been recognized or adopted by the court as a judgment of the court and a decree extracted and the application was thus fatally defective and not proper before the court. The second point is that the application was time barred under Order 53 Rule 2 of the Civil Procedure Rules.
24. The court is satisfied that the Notice of Preliminary Objection dated 3rd December 2025 meets the threshold in the Mukisa Biscuit's Manufacturing Co. Ltd Case (supra).
25. Concerning adoption of the Commission's decision as Judgment of the court, the applicants submitted that the fact they had not done so did not render their application defective.
26. Having impliedly admitted that the Commission's decision had not been adopted as a court Order, it is essential to determine when decisions of the Commission become enforceable in law.
27. Section 89 of the *Public Service Commission Act*, provides:-
 1. An person 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) 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.
28. Significantly, Section 89 of the *Public Service Commission Act* is styled as "Enforcement of appeal decision" to underscore the fact that, although the provisions of Section 89(1) are not couched in mandatory tone, the decision of the Public Service Commission can only be enforced is it in an Order of the Employment and Labour Relations Court.
29. It is trite law that by dint of Section 89(1) of the Act, the Employment and Labour Relations court is the only court with jurisdiction to adopt decisions of the Commission and the emerging jurisprudence of the court is that the court's jurisdiction is summary and non-litigious.
30. See in this regard County Government of Mandera V Hussein Daywo [2020] eKLR, Kenya Union of Clinical Officers V Kirinyaga County Public Service Board; Public Service Commission (Interested Party) [2023] KEELRC 3349 (KLR) and Murimi V County Government of Kirinyaga & 2 others ; Public Service Commission (Interested Party) [2023] KEELRC 3354 (KLR) among others).
31. The term adoption in ordinary legal parlance denotes "formal acceptance or approval or choose to take up or follow or accept responsibility"
32. This definition suggests that by adopting the decision of the Public Service Commission, the decision becomes a Judgment of the Employment and Labour Relations Court for purposes of enforcement which is governed by the law on enforcement of judgment or Orders against the National or County Government.



33. The rationale for adoption of decisions of the Commission is that the appellate and review processes prescribed under the provisions of the *Public Service Commission Act*, against decisions made by the County Government or the National Government or other public body against a public officer are part of the internal disciplinary mechanisms, which ought to be exhausted before the court's jurisdiction is invoked. It is an out of court dispute resolution mechanism and the decision is adopted pursuant to the provisions of Rule 69 of the Employment and Labour Relations Court (Procedure) Rules, 2024, vide a Miscellaneous Application.
34. Needless to belabour the Orders of mandamus sought in the instant application compel a particular person or persons to perform a particular act and in this case it would be reinstatement and payment of amounts due to the applicants as Ordered by the court and the provisions of Section 21 of the *Government Proceedings Act* ought to have been complied with.
35. See in this regard Republic V Principal Secretary Ministry of Internal Security & another Ex Parte Schon Noorani and another [2018 eKLR, Republic V Jomo Kenyatta University of Agriculture and Technology Ex Parte Elijah Kamau Murangi [2021] eKLR, Jidraph Kamua & another V Attorney General Mombasa Misc. Application No. 40 of 2000, Republic V Commissioner of Lands and another Ex Parte Kithinji Murugu Magere Nairobi High Court Misc. App. No. 39 of 2012, Republic V Kenya National Examination Council Ex Parte Gathenji & 9 others [1997] eKLR and Republic V Principal Secretary Ministry of Transport & Infrastructure & another Ex Parte Justino Pitias [2016] eKLR among others.
36. Without a court Judgment or Order before the court and a demonstration that all the prerequisites of the Order of mandamas have been complied with, it is clear that the Notice of Motion dated 30th November 2025 is fatally defective, not properly before the court and is for striking out.
37. In the upshot, the respondent's Preliminary objection is allowed and the applicant's Notice of Motion dated 30th November 2025 is struck out with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 18TH 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 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.

