

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**CAUSE NO. E100 OF 2025**

**FELIX AMBATSA INDURE ..... CLAIMANT**

**VERSUS**

**COUNTY GOVERNMENT OF MOMBASA ..... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD OF MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The claimant filed his suit on 9 October 2025. He alleges that he is an employee of the respondents as the chief internal auditor and that he was unlawfully suspended and removed from the payroll without any written communication. He is seeking various orders, including a declaration that the respondents' actions are unlawful.

In reply, the respondents filed Notice of Preliminary Objections dated 11 December 2025, the subject of this ruling. The objections are:

1. The court lacks jurisdiction to entertain and determine the matter in the first instance. The claimant having failed to exhaust the dispute resolution mechanism established under section 77 of the County Government Act and section 9(2) and (3) of the Public Service Commission Act.
2. Pursuant to section 77(1) of the CGA, any persons dissatisfied or aggrieved by a decision relating to recruitment, appointment, promotion, disciplinary control or any other human resource function in a county public service, should appeal to the PSC before seeking redress in court.
3. Under section 9(2) of the Fair Administrative Action Act, the High Court or a subordinate court under section (1) shall not review an administrative action of decision under the Act unless the mechanisms including internal mechanisms for

appeal or review and all remedies available under any other written law are first exhausted.

4. The Employment and Labour Relations Court lacks original jurisdiction in disputes concerning County Public officer where statutory appeals procedures have not been followed pursuant to section 87 (2) of the PSC Act which states that a person's shall not file any legal proceedings in any court with respect to matters within the jurisdiction of the PSC to hear and determine appeals from County Governments, Public Service unless the procedure provided under the Act is exhausted.
5. The claimant's suit is premature, incompetent and fatally defective. Having been filed in blatant disregard of the doctrine of exhaustion contrary to article 159(2) (c) of the Constitution which encourages alternative dispute resolution mechanisms.
6. The suit is incompetent, bad in law, improperly filed and an abuse of court process.

The claimant, acting in person, filed a Replying Affidavit and avers that the objections by the respondents have no basis because his case is about the violation of his constitutional rights under articles 27, 41, 47 and 236 of the constitution. he has been denied the right to fair administrative action, fair labour practices and such are matters for the court to address and not any other body. The respondents have moved with improper motive and engaged him in a 2 years in view of resolving his case but they have failed to improve his working environment and resulted into victimization and injustice. The alternative justice mechanism has failed and is not in good faith.

The PSC does not have a mandate or jurisdiction to determine constitutional validations or grant constitutional declarations. The matters at hand are for the court to determine and the objections should be dismissed to allow the suit be heard on merits.

Parties attended and made oral highlights.

The respondents asserted that the employment relationship subsists. The claimant has not applied the provisions of section 77 of the CGA or under the PSC Act, section 9 to address his case through the provided dispute resolution mechanisms as the employee of the respondents. Before moving the court, there is an appeal mechanism with the PSC which the claimant has failed to invoke. He cannot file suit directly to the court and these proceedings are premature.

The claimant submitted that there exists a decision of the respondents against him. The prolonged inaction in addressing his case has resulted in unlawful conduct and the remedy of going to the Public Service Board is inadequate to address his claims due to delays.

The claimant submitted that he was suspended illegally through informal communication. He went to the Commission on the Administration of Justice but the respondents were not cooperative. This has resulted in constructive dismissal. He is not under the PSC to warrant an appeal before it. In any case, the remedies sought are of a constitutional nature which can only be addressed by the court.

#### Determination

The claimant avers that he was verbally suspended from duty by the respondents. In February 2023, he was removed from the payroll without being issued with any written letter of suspension or interdiction, which is contrary to section 18 of the Employment Act.

The respondents have admitted that there is ongoing employment between the parties.

Employees of county governments are regulated under the CGA in terms of employment, deployment, discipline and management. Where there is a dispute relating to employment terms and conditions, including recruitment, appointment or other matters, recourse is made to section 77 of the CGA.

Section 77 of the County Government Act provides, in part, as follows:-

***a. 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.***

***b. The Commission shall entertain appeals on any decision relating to the employment of a person in a county government including a decision in respect of:***

***I. Recruitment, selection, appointment and qualifications attached to any office;***

***ii. Remuneration and terms and conditions of service;***

***iii. Disciplinary control;***

*iv. National values and principles of governance, under Article 10, and, values and principles of public service under Article 232 of the Constitution ;*

*V. retirement and other removal from service;*

*vi. Pension benefits, gratuity and any other terminal benefits; or*

*vii. Any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.*

On the other hand, Section 87(2) of the Public Service Commission Act 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.*

The claimant asserts that the respondents have made a decision removing him from the payroll and suspending him from duty. On this basis he moved to the CAJ and reported a dispute but the respondents failed to cooperate.

The decision to stop his salary payments and the alleged suspension invoked the provisions of section 77 of the CGA. See **Kamba & 8 others v County Public Service Board, Machakos County Government & 2 others [2023] KEELRC 2227 (KLR)**

As an employee of the respondents, he is protected by law and should address his grievances under the CGA framework. The assertion that his case concerns constitutional violations and that only the court can address them defeats his claims for payment arrears, which can well be addressed by the respondents through the mechanisms provided by the County Governments Act and the PSC Act.

In the case of **Secretary, County Public Service Board and Another v Hulbhan Gedi Abdille (2017) eKLR**, the Court of Appeal allowed the Appeal on the basis that the Respondent had failed to utilize the process provided by Section 77 of the County Governments Act as follows:

*There is no doubt that the Respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by Section 77 of the Act. The*

*Section provides not the only forum through which the Respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one specifically tailored by the legislators to meet needs such as the Respondent's. 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.*

The claimant has failed to address his case within the mechanisms under the CGA and PSC. The use of administrative measures allowed under CAJ demonstrates adherence to article 159(2) (c) of the Constitution. He should address the mechanisms under section 77 of the CGA and section 87 of the PSC Act available to resolve any dispute between him and the respondent.

In light of the binding decision of **Secretary, County Public Service Board and Another v Hulbhan Gedi Abdille (2017) eKLR** on the limitation law, which goes to jurisdiction, the appropriate order in this cause is to strike out the cause. The claimant has not exhausted internal dispute resolution mechanisms before the County Public Service Board and the Public Service Commission.

**From the foregoing, the objections by the respondent are with merit, and the claimant shall address the right given by section 77 of the County Governments Act and section 87 of the Public Service Commission Act. No orders on costs.**

Delivered in open court at Mombasa on this 26th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court assistant: Omar

..... and .....