

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT KERICHO

ELRC PETITION NO. E017 OF 2025
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

JOSEPH SITIEN ROTICH.....
.....PETITIONER

VERSUS

BOARD OF THE
MUNICIPALITY OF KERICHO.....1ST
RESPONDENT

CHIEF OFFICER, LANDS, HOUSINGS
AND PHYSICAL PLANNING.....2ND
RESPONDENT

THE COUNTY GOVERNMENT OF
KERICHO.....3RD
RESPONDENT

THE KERICHO COUNTY
PUBLIC SERVICE BOARD.....4TH
RESPONDENT

RULING

Introduction

1. The Respondents file a Notice of Preliminary Objection dated 31st October 2025 seeking the following prayers that:

1. This Honourable Court lacks jurisdiction to entertain this suit at this stage as the

Petitioner has not exhausted the internal disciplinary mechanism provided under sections 59, 74 and 75 of the County Governments Act and Clause 32 (1) (a) of the CHARTER FOR THE KERICHO MUNICIPAL BOARD 2025.

2. The suit is premature and amounts to interference with the ongoing internal disciplinary process. The Petitioner has not allowed the disciplinary process initiated by the 1st Respondent to run its full course.

3. The Petitioner's suit offends the Doctrine of Exhaustion of Remedies as espoused under Section 77 of the County Government Act and Sections 85, 86, and 87 of the Public Service Commission Act since the matter at hand ought to have been brought before the County Public Service Board as stipulated under section 59 (1) of the County Government Act. The Petitioner has failed to exhaust all internal mechanisms including statutory and administrative remedies before the court

4. The present suit is fatally defective, incompetent, premature and an abuse of the Court process, only intended to derail a lawful and procedural disciplinary process and should be dismissed with costs to the Respondents.

5. THAT the suit is scandalous, frivolous and vexatious and out-rightly ripe for striking out as advanced by Order 2 Rule 15 of the Civil Procedure Rules.

6. By dint of this motion in limine, any further proceedings in this matter ought to be held in abeyance pending the hearing and determination of this preliminary objection.

2. Parties canvassed the preliminary objection by way of written submissions.

Petitioner's written submissions

3. The Petitioner submitted that the Respondents' preliminary objection is misconceived because it relies on disputed facts rather than pure points of law, contrary to the principles laid down in the case of ***Odinga v Independent Electoral & Boundaries***

Commission & 3 others [2013] KESC 8 (KLR)

where the Supreme Court stated as follows:

“The nature and scope of a “preliminary issue” is cogently defined in the statement of Law, JA, in the case of Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696 at 700:“So far as I am aware, a preliminary objection consists of a 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...”

4. The Petitioner submitted that while the Respondents argue that this Court lacks jurisdiction under **sections 59, 74, and 75 of the County Governments Act, 2012** and **clause 32(1)(a) of the Kericho Municipal Board Charter, 2025**, the Petitioner contends that only the County Public Service Board has statutory authority to discipline or remove municipal managers. Since the Board is not constituted, the Municipal Board acted ultra vires in suspending the Petitioner, rendering the suspension null and void. The Respondents’ reliance on **Section 77 of the County Governments**

Act and **the Public Service Commission Act** is also misplaced, as appeals to the Public Service Commission only apply to decisions made by the County Public Service Board, not the Municipal Board. The Petitioner therefore submitted that the doctrine of exhaustion of remedies cannot apply where the remedy is non-existent or unlawful, and that the challenge is directed at an illegal and void act already infringing constitutional rights under **Articles 41, 47, and 234 of the Constitution**. Accordingly, the court has jurisdiction, the Petition is properly before it, and the preliminary objection should be dismissed.

5. The Petitioner relied on the case of ***Cherangani Hills Limited v Jyoti Structures Limited [2025] KEHC 5610 (KLR)***, the court stated as follows:

“The doctrine of exhaustion binds parties particularly where a contract or term of engagement provides so to first explore and exhaust the available alternative dispute resolution mechanism before resorting to courts before one can say the doctrine applies, he/she alleging must demonstrate the following;

- i. That a mechanism exists to resolve the dispute***
 - ii. That the alternative mechanism is lawful, fair and contains sufficient safeguards for valid, objective and fair determination of a dispute***
 - iii. That the alternative mechanism is expeditious, efficient, lawful, reasonable and procedurally fair (Article 47(1) of the Constitution)***
- The above guidelines determine whether the doctrine of exhaustion applies in a particular set of circumstances”***

The Petitioner maintains that no lawful alternative dispute resolution mechanism exists.

6. Accordingly, the Petitioners submitted that the Petition is properly before the Court, not premature, and raises a legitimate challenge to an unlawful act, warranting dismissal of the Respondents’ preliminary objection.
7. At the time of writing this ruling, the Respondents did not file their respective submissions on the CTS platform or presented a hard copy as per the practice rules of this court.

Analysis and determination

8. The court has considered the preliminary objection together with the submissions on record. The issue for determination in this application is whether the Petitioner was bound by the internal conflict resolution mechanism provided in **Section 77 of County Government Act and Section 87 of the Public Service Commission Act.**
9. The court reiterates its earlier reference to **Odinga v Independent Electoral & Boundaries Commission & 3 others (Supra)**, as reaffirmed in **Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696**, emphasizing that a preliminary objection must be founded purely on points of law.
10. In this instant case, the Petitioner avers that he was lawfully appointed as Municipal Manager by the Kericho County Public Service Board in June 2019, with his contract duly renewed in June 2024. However, in March 2025, the Kericho Municipal Board irregularly issued a termination letter despite lacking disciplinary or appointing authority under the County Governments Act. Following an appeal, he was reinstated in May

2025, with confirmation from the County Public Service Management Department and resumption of full salary. Shockingly, in September 2025, the 1st Respondent purported to suspend him and appoint an Acting Municipal Manager, who is already a substantive manager of Litein Municipality, over which the Respondent has no jurisdiction.

11. The Petitioner argues that under **section 59 of the County Governments Act**, only the County Public Service Board currently not constituted has authority to hire, discipline, or terminate municipal managers. He further contends that the Kericho Municipal Board is unlawfully constituted, as its chairperson lacks the mandatory qualifications under **section 14(6) of the Urban Areas and Cities (Amendment) Act, 2019**. The Respondent's actions are therefore unconstitutional, procedurally unfair, *ultra vires*, and a **nullity ab initio**, violating the Petitioner's rights under **Articles 41, 47, and 50 of the Constitution**, and exposing him to unlawful administrative action.

12. **Section 59(1)(b) and (c) of the County Governments Act** empowers the County Public Service Board to appoint persons to offices within the

county public service, including boards of cities and urban areas, and to exercise disciplinary control over them. Section 77 of the same Act provides that any person dissatisfied with a decision of the Board, or in the exercise of disciplinary control, may appeal to the Public Service Commission within ninety days, with limited scope for review if new facts arise or errors appear on record. **Section 85 of the Public Service Commission Act**, read with **Article 234(2)(i) of the Constitution**, further mandates the Commission to hear and determine appeals on employment matters such as recruitment, appointment, remuneration, disciplinary control, retirement, and terminal benefits, while Section 87 of the same Act empowers it to co-opt experts depending on the nature of the appeal. Importantly, section 87 also bars parties from filing court proceedings on matters within the Commission's jurisdiction unless the prescribed appeal procedures are first exhausted, positioning the Commission as the primary forum for resolving county public service disputes before they reach the courts.

13. In the Court of Appeal case in **Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)**, where the Court held:

“Where there is a clear procedure for the redress of any particular grievance prescribed by law or an Act of Parliament, that procedure should be strictly followed.”

14. In the case of ***Nyamira County Public Service Board & 2 others v Mageto***

[2025] KEELRC 1753 (KLR) the court stated as follows:

“The principle of exhaustion of remedies commonly referred to as the exhaustion doctrine, requires a party to first utilize or exhaust all available non-judicial remedies before seeking court intervention. This is especially so where there are statutory instruments providing for the same. The Court is minded that though the available alternative dispute resolution mechanisms are availed, it is not always the case that one must utilise them before resorting to court. There are exceptional instances where the intervention of the Court can be availed because the exhaustion doctrine does not deny courts their jurisdiction.”

15. In the case of ***Nyaoga v Chairman Kisii County Assembly & 3 others [2023] KECA 1540 (KLR)*** the Court of Appeal stated as follows:

“As provided in section 9(4) of the Fair Administrative Action Act, there are exceptions to the exhaustion rule in exceptional circumstances [underlined and emboldened for emphasis]. In the case of Republic vs. National Environmental Management Authority Ex Parte Sound Equipment Ltd, [2011] eKLR this Court stated: “...where there was an alternative remedy and especially where parliament had provided a statutory appeal procedure, it is only on exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made...it is necessary for the court to look carefully at the suitability of the statutory appeal in context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.”

Section 9(4) of the Fair Administrative Actions Act provides that the High Court or subordinate Court may, in exceptional circumstances and on application by the applicant exempt such person from the obligation to exhaust any remedy if the court considers such remedy to be in the interest of justice. See the William Odhiambo Ramogi case (supra) paragraphs 60 & 61.

This Court in Fleur Investments Limited vs. Commissioner of Domestic Taxes & Another [2018] eKLR did state that:

“Whereas courts of law are enjoined to defer to specialized tribunals and other ADR statutory bodies created by parliament to resolve certain specific disputes, the court cannot, being a bastion of justice, sit back and watch such institutions roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. This Court is perfectly in order to intervene where there is clear abuse of

discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

16. The Petitioner as per the pleading was appointed as Municipal Manager of the Respondent vide an appointment letter dated 6th June 2019 signed by the 2nd Respondent and the same was received on 10th June 2024 by the 4th Respondent. The evidence on record depicts that on 5th March 2025 Petitioner was served with a termination letter issued by the 1st Respondent.

The Petitioner appealed the termination and was reinstated as per the letter dated 5th May 2025 by the 1st Respondent. Then on 18th September 2025 the 1st Respondent suspended the Petitioner and placed him on half salary pending disciplinary proceedings.

17. The 1st Respondent has then appointed an Acting Municipal Manager and has instructed the Petitioner to hand over the office to him.

18. The Preliminary Objection raises the issue of jurisdiction of this court citing that the Petitioner did not comply with the exhaustion doctrine as provided in **Sections 59, 74 and 75 of the County Government Act.** Also, he was said not to have complied with **Sections 77 of the Said County Government Act** and **Sections 85, 86, and 87 of the Public Service Commission Act.**

19. The court has considered **Section 77 of County Government Act** which states as follows:-

“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.

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;**
- (d) retirement and other removal from service;**
- (e) 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.**

20. Also, **Section 85 of Public Service Act** states: -

“Appeal from County Government public service

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, 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 forms of removal from the public 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 an appeal in that regard.”

And **Section 87** of the same **Public Service Commission Act** provides:-

“The Commission may co-opt experts

The Commission may in hearing and determining appeals from the County

Governments' Public Service, co-opt relevant experts depending on the nature of the appeal.

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.”

21. The court having analysed the above statutes, case laws and submissions of the Petitioner holds that the doctrine of exhaustion under **section 77 of the County Governments Act** applies to decisions made by the County Public Service Board or lawful disciplinary authorities. In this particular case, the Municipal Board lacks statutory authority under **section 59 of the County Governments Act** purporting to suspend the Petitioner, as the act is *ultra vires* and *void ab initio*. In such circumstances, one may challenge the action directly in the court with the relevant jurisdiction and this court has such jurisdiction without first appealing to internal mechanisms as per **section 77 of the County**

Government Act and section 87 of the Public Service Commission Act.

22. Flowing from the foregoing, the court finds the preliminary objection dated 31st October 2025 lacks merit and it is therefore dismissed.

23. Each party to bear its own costs.

It is so ordered.

Dated, Signed and Delivered virtually at Nakuru this 3rd Day of March, 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

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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