

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT MOMBASA
CAUSE NO. E123 OF 2025

MOHAMED ALI OMAR.....CLAIMANT

VERSUS

COAST WATERWORKS DEVELOPMENT AGENCY.....
RESPONDENT

RULING

The ruling herein relates to Notice of Preliminary Objections by the respondent, Coast Waterworks Development Agency, dated 30 January 2026. The objections are:

The suit offends the doctrine of exhaustion by dint of section 74 of the Public Service Commission Act and section 8 of the Public Service Commission (State Corporations and Public Universities Disciplinary Appeals Procedure) Regulations, 2025.

That the suit should be dismissed with costs.

The respondent submitted that the claim has failed to adhere to the procedures of the disciplinary process and also failed to invoke the appeal mechanism of the Public Service Commission (PSC). The claim is that there is a summary dismissal based on show-cause notices and hearing notices issued by the respondent. The procedure for disciplinary hearings of civil servants within state corporations is set out in section 8 of the Public Service Commission [State Corporations and Public Universities Disciplinary Appeal Procedure] Regulations, 2025. These provisions are anchored in sections 74 and 8 of the Public Service Commission Act, which provide for the disciplinary procedures and an appeal procedure against the decision of the state corporation or agency.

The claimant has moved the court following summary dismissal without invoking and exhausting the available dispute resolution mechanism with the PSC. This is contrary to the doctrine of exhaustion as held in **Nyaoga v Chairman Kisii County Assembly & others [2023] eKLR** and **Kenya County Government Workers Union v Taita Taveta County Government and Another Cause of. E031 of 2025**. The courts have held that the question of exhaustion of administrative remedies arises when a litigant aggrieved by an agency's actions seeks redress from a court, rather than pursuing the remedies available before the agency itself.

In this case, there are no exceptional circumstances set out by the claimant as to why he has failed to exhaust the available dispute resolution mechanism before the PSC. His case should be dismissed for this lapse.

The claim submitted that the objections by the respondent relate to matters of fact and not the law to pass the threshold of preliminary objections as held in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [2969] EA**.

The objections are premised on assumptions that the claimant is subject to the PSC appellant mandate and that he has not addressed section 74 of the Public Service Commission Act, or that he is an internal dispute resolution mechanism to be exhausted. These mechanisms are not available to the claimant, as held in **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others**, that alternative dispute resolution mechanisms should only be applied where available. However, where such mechanisms are inadequate, a party is not bound, as held in **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others**.

The doctrine of exhaustion is not absolute. Section 74 of the Public Service Commission Act is inapplicable to the claimant. The PSC mandate relates to public officers and those in the public service.

The claimant submitted that, even where the PSC mandate I addressed, it is not capable of addressing the constitutional interpretations sought in this case. The mandate of the court is addressed under Article 162(2) of the Constitution, giving the court exclusive jurisdiction to address the violation of constitutional rights and not the PSC, as held in **Judges and Magistrates Vetting Board & 2 others v Centre for Human Rights and Democracy & 11 others Petition 13A, 14, and 15 of 2024**.

The objections by the respondent are without merit and should be dismissed with costs, and the claim heard on the merits.

Determination

Indeed, a preliminary objection should be on pure points of law; once determined, it is likely to address the issue, as held in the **Mukisa Biscuit** Case cited above.

A 'Preliminary Objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and, in any event, to be proved through the process of evidence. ...

In this case, the claimant, in his Memorandum of Claim, defines himself as the former employee of the respondent, who is a state corporation created under the Water Act, and as a senior administration officer appointed by the respondent. His case is further that, pursuant to the respondent's Career Guidelines, an officer within Job Group 5 of the Salaries and Remuneration Commission (SRC) Structure of 5 July 2020 is entitled to the remuneration provided therein. The claimant asserts that under his employment, the respondent committed various breaches of his rights and thus seeks various declarations.

The fact that the claimant is employed by a state corporation is pleaded in his Memorandum of Claim. He acknowledges that the respondent's employees are regulated under the SRC mandate and career progression guidelines.

In **Stephen Mutoro, Ephraim Kanake and Henry Ochieng, v National Social Security Fund Board of Trustees & another; Cabinet Secretary, Ministry of Labour and Social Protection (Interested)**, the court emphasised that state corporations and state agencies, such as the respondent, employ public officers. These are persons in the public service who fall under the PSC's mandate regarding discipline and appeals procedures.

In the **National Union of Water & Sewerage Employees v Mathira Water and Sanitation Company Limited & 2 Others [2013] eKLR and Kenya Union of Domestic, Hotels, Education and Allied Workers (Kudhehia Workers) v Salaries and Remuneration Commission [2014] eKLR**, the court has reiterated this fact. All state agencies employ public servants and officers. All disciplinary matters, including appeals, must be processed through the PSC disciplinary procedures.

In this regard, the claimant, being an employee of a state agency, upon the decision rendered by the respondent with regard to his employment, whether relating to a dismissal or termination of his employment, recourse is the mechanism under section 74 of the Public Service Commission Act or section 8 of the Public Service Commission [State Corporation and Public Universities Disciplinary Appeals Procedure] Regulations 2025. These mechanisms must be exhausted under the exhaustion doctrine as held in **Musumba & 37 others v Kakamega County Water and Sanitation Company & 5 others [2022] KEELRC 68 (KLR)** and in **Kenya County Government Workers' Union v Taita Taveta County Government & another [2025] KEELRC 1956 (KLR)**

Whereas the court has broad jurisdiction under Article 162(2) (a) of the *Constitution* and Section 12 of the *Employment and Labour Relations Court Act* to hear and determine constitutional violations, such jurisdiction must be understood in context, as held in **Daniel N. Mugendi v Kenyatta University & 3 Others [2013] eKLR**. When the claimant, as an employee of the respondent state agency, has his employment regulated under the PSC and SRC mechanisms, to address any matters arising thereof, the primary forum for his complaint is not the court. He must apply under the correct forum, and to move the court as herein done is premature.

Therefore, having addressed the objections by the respondent, the claim herein is premature. The suit is struck out. Each party is to bear its costs.

Delivered in open court at Mombasa, this 19th day of March 2026.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Omar

..... and

