

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**JUDICIAL REVIEW NO. E010 OF 2026**

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

**REPUBLIC.....**

**APPLICANT**

**VERSUS**

**MURANGA UNIVERSITY..... 1<sup>ST</sup>**

**RESPONDENT**

**PUBLIC SERVICE COMMISSION..... 2<sup>ND</sup>**

**RESPONDENT**

**DR ANTONETA NJERI KARIRU.....EX-PARTE**

**APPLICANT**

**RULING**

Before the Court for determination is the *Ex parte* applicant's Notice of Motion dated 4<sup>th</sup> February, 2026 filed pursuant to leave granted on 30<sup>th</sup> January, 2026. The motion seeks orders that:-

1. An order of *mandamus* compelling the 1<sup>st</sup> respondent to *comply with* the decision of the Public Service Commission in Appeal No. E007 of 2025 ***Dr. Antoneta Njeri Kariru v Muranga University*** and reinstate the *Ex parte* Applicant to Job Group 12 in the School of Hospitality and Tourism Management and pay

the *Ex-parte* applicant all salary and attendant benefits from the date of dismissal.

2. The 1<sup>st</sup> Respondent be compelled to file an affidavit of compliance within such period as this Honourable Court may determine.
3. An order of *mandamus* be issued compelling the 1<sup>st</sup> respondent to continue paying the *Ex parte* applicant her monthly salary and all other dues and lawful emoluments without interruption in accordance with the existing terms, until the hearing and final determination of this matter or until further orders of the Court.
4. Consequent to the grant of the prayers above, the Honourable Court be pleased to issue such further directions and order as may be necessary to give effect to the foregoing orders and/or favour the cause of justice.
5. Costs of the Application be provided for.

The motion was expressed under Order 53(3) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act Section 4 of the Fair Administrative Action Act and Sections 8 and 9 of the Law Reform Act, and based on the grounds set out on its face and the

Supporting Affidavit of the Exparte applicant sworn on 4<sup>th</sup> February 2026.

The applicant's case is that she accepted the Respondent's offer of employment on 5<sup>th</sup> November 2020 and although she had been experiencing health challenges, she continued to serve the Respondent diligently as a Lecturer but the demise of her father in late 2024 made the situation worse and led to hospitalization from 31<sup>st</sup> November 2024 to 9<sup>th</sup> December 2024, thus absent from duty and employment was terminated vide letter dated 18<sup>th</sup> December 2024 and no Medical Board had been appointed by the Respondent's Council in accordance with the terms of service.

That the appeal to the Respondent's Council dated 31<sup>st</sup> January 2025 was unsuccessful as communicated vide letter dated 10<sup>th</sup> March 2025 but the appeal to the Public Service Commission dated 26<sup>th</sup> May, 2025 was successful. The Commission directed reinstatement of the *Ex parte* applicant to the position of Lecturer but the directive was not honoured.

According to the *Ex parte* applicant, the refusal by the 1<sup>st</sup> Respondent to implement the directive of the 2<sup>nd</sup> Respondent frustrated the enforcement of a binding decision and violated the Constitution of Kenya and was inconsistent with the principles of accountability, transparency and good governance and the court

had to intervene to uphold the integrity and credibility of public institutions.

By a Replying Affidavit sworn on 11<sup>th</sup> February 2026, Professor Beatrice Mugendi deposed that the instant motion was filed prematurely since the 1<sup>st</sup> Respondent had at least 6 months to apply for review of the decision of the Public Service Commission and the orders made on 30<sup>th</sup> January 2026 were not merited and the 1<sup>st</sup> Respondent had applied for a review of the decision.

The affidavit deposed that the *Ex parte* applicant's health challenges began in 2021 and had been accommodated until dismissed in December 2024. That a Medical Board considered the *Ex parte* applicant's case and established that there was voluntary non-adherence to the drug regime which led to relapses, during which time the *Ex parte* Applicant neither reported to work nor render any services to the Respondent.

That the Respondent invoked the terms of employment which allowed it to revoke an appointment based on the opinion of a Medical Board. The affiant deposed that after termination of employment, the applicant applied to be cleared on her volition and was paid all terminal benefits.

In her Further Affidavit sworn on 17<sup>th</sup> February 2026, the Applicant deposed that the Respondents allegation that she had not rendered services for five(5) semesters was misleading and baseless, that she set and marked CATS and the examination. The affidavit deposed that the 1<sup>st</sup> Respondent failed to comply with the provision of section 82(2) of the Public Service Commission Act.

By a Replying Affidavit sworn by Mr. Paul Famba on 19<sup>th</sup> February 2026, the affiant deposed that after the 2<sup>nd</sup> Respondent heard the *Ex parte* Applicants Appeal No. E007 of 2025, it directed the reinstatement of the *Ex parte* Applicant but it also directed the 1<sup>st</sup> Respondent to request for the constitution of a Medical Board to assess the *Ex parte* Applicant's fitness to serve under the provisions of the Public Service Commission Act and the Public Service Commission Regulations 2020. The affiant deposed that the *Ex parte* Applicant's demand for immediate and unconditional reinstatement was a selective reading of the 2<sup>nd</sup> Respondent's decision, which required the 1<sup>st</sup> Respondent to comply with statutory requirements and the order of *mandamus* could not issue to compel performance in a manner inconsistent with statutory provisions.

The affiant further deposed that the 2<sup>nd</sup> Respondent's decision on reinstatement was unconditional and urged the Court to interpret the decision in its proper legal context.

## **Applicant's Submissions**

As to whether the *Ex parte* Applicant had met the threshold for *mandamus*, reliance was placed on ***Kenya National Examination Council V Republic Exparte Godfrey Gathenji Njoroge*** to urge that the *Ex Parte* Applicant had established the prerequisites, namely, existence of public duty, direct and personal legal interest in enforcement of the decision, failure and/or refusal to perform by the respondent and there was no alternative.

Counsel urged the Court to find that the threshold had been meet.

As to whether the 1<sup>st</sup> Respondent's failure implement the decision was an illegality or abuse of power, reliance was placed on National ***Hospital Insurance Fund Management, Board v Kenya Union of Commercial Food and Allied Workers & 2 others***, to urge that the 1<sup>st</sup> Respondent's conduct amounted to impunity.

As to whether the *Ex parte* Applicant is entitled to reinstatement and payment of withheld salary and benefits, reliance was placed on ***Judicial Service Commission v Njora and Stephen Parenor v Judicial Service Commission (2014) eKLR*** on reinstatement of state office'r to urge that the *Ex parte* applicant's reinstatement was inevitable.

On review by the 1<sup>st</sup> Respondent, Counsel submitted that the 1<sup>st</sup> Respondent waited until the applicant-initiated enforcement and the application for review was an afterthought.

Reliance was placed on ***Muchanga Investments Ltd v Safaris Unlimited (Africa) Limited*** on abuse of court process and submit that the 1<sup>st</sup> Respondent's application for review should not impede the *Ex parte* applicant's motion for *mandamus*.

Finally, reliance was placed on the sentiments of the court in ***Jasbir Singh Rai & 3 others v Tarlochan Singh Raji & 4 Others*** to urge that the 1<sup>st</sup> Respondent should bear the costs of the case.

### **Respondent's Submissions**

Counsel for the 1<sup>st</sup> Respondent submitted that section 75 of Public Service Commission Act accorded the 1<sup>st</sup> Respondent six (6) months to apply for review and as the process was on-going the instant application was premature.

Reliance was placed on ***Speaker of the National Assembly v Karume [1992] KECA 42 [KLR]*** and ***Republic v National Environment Management Authority ex parte Sound Equipment Limited [2010] KEHC 3736 [KLR]***, on exhaustion of other mechanisms before invoking the Courts jurisdiction.

Concerning the threshold for *mandamus*, reliance was placed on ***Kenya National Examinations Counsel v Republic Ex parte Geoffrey Gathenji Njoroge (supra)*** to urge that implementing the decision of the 1<sup>st</sup> Respondent would defeat the right under section 75 of the Public Service Commission Act and *mandamus* could not issue.

On dismissal of the *Ex parte* applicant counsel submitted that the Applicant absented herself from the workplace across **five** consecutive semesters without notifying the 1<sup>st</sup> Respondent.

On reinstatement, counsel submitted that the instant application and reliefs sought fell outside the scope of *mandamus* and no refusal had been demonstrated.

On reinstatement, counsel submitted that this was a substantive remedy that required analysis of the evidence and Judicial Review was concerned with the legality of the decision-making process and the application was an abuse of Judicial Review.

It is common ground that the *Ex parte* Applicant was an employee of the 1<sup>st</sup> Respondent from December 2020 to 18<sup>th</sup> December 2024, when her employment was terminated by the 1<sup>st</sup> Respondent for absenteeism across five (5) semesters. It is equally not in dispute that the *Ex parte* Applicant's appeal to the 2<sup>nd</sup> Respondent was

successful in that by its decision communicated vide letter dated 25<sup>th</sup> November 2025, the 1<sup>st</sup> Respondent directed that:-

- (a) The decision of the Respondent's University Council to terminate the Appellant through a letter dated 18<sup>th</sup> December 2024, is set aside.
- (b) The Appellant is reinstated to her former position as a Lecturer in the School of Hospitality and Tourism Management.
- (c) The Respondent is directed to call the Appellant to appear before a Medical Board duly constituted as per procedure under section 82 of the Public Service Commission Act and Regulation 72 of the Public Service Commission Regulations, 2020.

The bone of contention is that the 1<sup>st</sup> Respondent has failed or refused to implement the decision of the 2<sup>nd</sup> Respondent. While the *Ex parte* Applicant averred and submitted that the remedy of reinstatement was unconditional, the Respondents deposed that the orders were not absolute appearing to suggest that directive (a) and (b) of the 2<sup>nd</sup> respondent were subject to (c), which in the court's view was patently not the case

Needless to emphasize, the *Ex parte* Applicant's reinstatement became effective from the date of termination of employment as it was automatic. The 2<sup>nd</sup> Respondent prescribed no conditions to the directive. Appearance of the Applicant before a medical Board

was the 1<sup>st</sup> Respondent's responsibility in that it had to comply with the relevant provisions of law and was thus within its mandate. All that the *Ex Parte* applicant could do was await the summon to present herself before the Medical Board.

Be that as it may, the *Ex Parte* Applicant has not exhausted the internal dispute resolution mechanisms under the Public Service Commission Act which embodies the right of review by either party.

Having subjected herself and the 1<sup>st</sup> Respondent to the process, the *Ex Parte* Applicant was obligated to exhaust it before invoking the jurisdiction of this Court. Under section 75 of the Public Service Commission Act, a dissatisfied party has six (6) months within which to apply for review. The law does not prescribe the timing. The party is free to lodge the application at any time before the six (6) months lapse and the 1<sup>st</sup> Respondent's application for review could have been made at any time before 19<sup>th</sup> May 2026.

Thus the 1<sup>st</sup> Respondent cannot be faulted on the timing of its application.

It is trite law, and as submitted by counsel for the 1<sup>st</sup> Respondent that were a statute provided an alternative dispute resolution mechanism it had to be exhausted before the court's jurisdiction was invoked as held in ***Speaker of the National Assembly v***

**Karume (supra).** Such a mechanism, is the first port of call as held in **Geoffrey Muthinja and 2 others v Samuel Muguna Henry & 1756 others [2017] eKLR , NGO'S Co-ordination Board v EG & 4 Others; Katiba Institute (Amicus Curie) [2023]eKLR , Republic v Commissioner General Kenya Revenue Authority Ex Parte Sanofi Aventis Ltd [2019]eKLR Secretary Public Service Board & another v Hulbhai Gedi Abdille** among others.

Granted that the *Ex part* Applicant filed the instant suit on 29<sup>th</sup> January 2026, the suit was filed before the internal dispute resolution mechanism had been exhausted in accord with the provisions of the Fair Administrative Action Act. The Court finds that the instant suit was filed prematurely.

The foregoing finding notwithstanding, it is important to determine whether the *Ex parte* applicant's decision by the 2<sup>nd</sup> Respondent is enforceable by way of *mandamus* at this stage.

It is trite law that decisions of the Public Service Commission made in exercise of its appellate jurisdiction to hear appeals as mandated by the provisions of Article 234(2) (i) of the Constitution of Kenya and the provisions of the County Governments Act and the Public Service Commission Act are enforced by the Employment and

Labour Relations Court by dint of the provisions of section 89 of the Public Service Commission Act, which provide:-

- (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 law including removal from office.

Although section 89 (1) is not couched in mandatory tone, the decision of the Public Service Commission can only be enforced if it is an order of the Employment and Labour Relations Court.

Strangely, the *Ex parte* Applicant adduced no evidence to show that the 1<sup>st</sup> Respondent's failure or refusal to implement the decision of the 2<sup>nd</sup> Respondent had been brought to the 2<sup>nd</sup> Respondent's attention for action under section 89(2) of the Act, which is beyond the purview of this Court.

Significantly section 89 of the Public Service Commission Act is entitled "Enforcement of appeal decisions." and it is the only provision on enforcement. It is trite law that decisions of the Public Service Commission are not judicial decisions and are only

enforceable by the Employment and Labour Relations Court (ELRC) after the decision is adopted as an order of the court which constitutes it is a judicial decision capable of being enforced. The Court adopts the decision as its own.

The term adoption ordinarily means formal approval or acceptance of responsibility. By adopting or recognizing the decision of the Public Service Commission, the decision becomes a decision of the Court akin to any other decision.

It is the duty of any person affected by the decision who is desirous of enforcing it to apply for seek its adoption by the court vide a Notice of Motion pursuant to Regulation 69 of the Employment and Labour Relations Court (Procedure) Rules 2024 which provides:-

- (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 for adoption and enforcement as an order of the Court.
- (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.

The emerging jurisprudence of the Court in the adoption of decisions of the Public Service Commission is that the Court's jurisdiction is summary and non-litigious. See in this regard ***County Government of Mandera v Hussein Daywo [2020] eKLR, Kenya Union of Clinical Officer v Kirinyaga County Public Service Board: Public Service Commission: Interested Party [2023] eKLR*** and ***Murimi v County Government of Kirinyaga & 2 Others: PSC (Interested Party) [2023] KEELRC 3354 KLR***.

Prior to its adoption or recognition by the Court a decision of the Public Service Commission, it is not enforceable by the court.

Regrettably, the *Ex parte* Applicant adduced no evidence to demonstrate that the decision of the 2<sup>nd</sup> Respondent had been adopted as an order of this Court for purposes of enforcement.

In the circumstances, the decision of the 2<sup>nd</sup> Respondent relied upon by the *Ex parte* applicant is unenforceable by this court by way of *mandamus* or otherwise for the simple reason that this not a judicial decision but a decision made by the Public Service Commission in exercise of the appeal process under internal dispute resolution mechanisms for public officers.

Indeed, this Court has jurisdiction to hear and determine a suit filed by a person dissatisfied with the decision of the Public Service Commission.

Finally, without a court judgment or Order before this Court and a demonstration that all the requisites for the grant of an order of *Mandamus* have been met, it is clear that the *Ex parte* applicant's Notice of Motion dated 4<sup>th</sup> February, 2026 is unsustainable.

The upshot of the foregoing is that the *Ex parte* applicant's Notice of Motion struck out on account of having been filed prematurely and the absence of an enforceable decision. Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI  
ON THIS 14<sup>TH</sup> DAY OF APRIL, 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**