

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE NO. E029 OF 2025

HARRISON GATOBU GITONGA alias

NCHAMBA

MBITHI

GITONGA.....CLAIMANT

VERSUS

MERU COUNTY PUBLIC SERVICE BOARD

COUNTY GOVERNMENT OF MERU.....1ST

RESPONDENT

THE GOVERNOR COUNTY

GOVERNMENT OF MERU.....2ND

RESPONDENT

COUNTY SECRETARY MERU COUNTY.....3RD

RESPONDENT

RULING

1. The Claimant instituted these proceedings by way of a Statement of Claim dated 21st October 2025, in which he avers that, by a letter dated 30th August 2022, he was appointed by the 1st Respondent as Chief of Staff in the Governor’s Office for a fixed term of five (5) years, commencing on 30th August 2022 and set to expire on 30th August 2027.

2. The Claimant further avers that in March 2025, he received only a portion of his salary and, upon inquiry, was informed that his contract of employment had come to an end following the impeachment of Hon. Kawira Mwangaza. According to the Claimant, the Respondents indicated that his position was a political appointment intrinsically tied to the tenure of the appointing Governor, and that the partial salary paid for March 2025 covered the period from 1st March 2025 to 14th March 2025.

3. It is the Claimant's position that his removal from the payroll and the purported termination of his employment were unlawful, unfair, procedurally flawed, and tainted with illegality.

4. Upon being served with the Statement of Claim, the 2nd, 3rd, and 4th Respondents filed a Notice of Preliminary Objection dated 21st November 2015, premised on the following three grounds:

- 1) The Motion and the Claim offend the doctrine of exhaustion. Specifically, the Claimant has prematurely invoked this Honourable Court's jurisdiction and impermissibly bypassed the Public Service Commission Act, alternative dispute resolution proposed under cause 13 of the employment contract dated 30th August 2022 and the statutory***

remedy under Section 9 (1) and (2) of the Fair Administrative Action Act.

2) The Claimant lacks locus standi to enforce the Contract against the 2nd, 3rd, and 4th Respondents because his name differs from the employee named in the Contract.

3) The 2nd, 3rd and 4th Respondents are improperly joined to these proceedings, given that: they are not parties to the Contract in tandem with the doctrine of privity of contract; no cause of action lies against them; and the 4th Respondent lacks the capacity to sue or be sued under the County Government Act.

5. On 3rd November 2025, the Court directed that the Preliminary Objection be canvassed by way of written submissions.

Submissions

6. In support of the Preliminary Objection, the 2nd, 3rd, and 4th Respondents contend that the Claimant's grievance arises from his removal from service by the Meru County Public Service Board (1st Respondent), a matter falling within the appellate jurisdiction of the Public Service Commission pursuant to **Section 77(2)(e) and (g) of the County Governments Act**. They further submit that Section 77 provides that the Claimant must exhaust the available statutory

remedies before approaching this Court. In the same vein, the Respondents submit that the Claimant cannot unjustifiably elect to bypass the specialized alternative statutory and/or contractual remedy, as doing so violates the constitutional, statutory, and contractual design of dispute resolution within the public service.

7. The 2nd, 3rd, and 4th Respondents further contend that the Claimant has not demonstrated any legitimate justification or exceptional circumstances that would render the alternative remedies inadequate to redress his grievance(s). In the Respondent's view, the claim is premature and procedurally flawed. In support of this position, reliance was placed on the case of *Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)*.
8. On the issue of *locus standi*, the 2nd, 3rd, and 4th Respondents submit that while the office of the County Secretary is established under **Section 44 of the County Governments Act**, the said statute does not confer upon it an independent juristic personality capable of suing or being sued separately from the County Government. Consequently, they argue that the Secretary cannot defend itself in this Claim.

9. It was the 2nd, 3rd, and 4th Respondents' further submission that no specific relief is sought against the Secretary and no actionable decision is attributed to that office. In their view, its joinder is unnecessary and constitutes a misjoinder.
10. Citing the decision in ***Genga v APA Insurance Kenya Ltd [2024] KEHC 11950 (KLR)***, the 2nd, 3rd, and 4th Respondents argue that the Meru County Government and the Governor are not parties to the Claimant's contract of employment. They contend that their joinder in these proceedings is improper and, to this end, have urged the Court to strike them out.
11. In opposition to the Preliminary Objection, the Claimant submits that no disciplinary process was undertaken by the County Public Service Board so as to warrant an appeal to the Public Service Commission.
12. The Claimant further contends that the circumstances of this case are exceptional. In this regard, he avers that although the County Public Service Board was his employer, the decision to remove him from the payroll was made by the 2nd to 4th Respondents without the knowledge, involvement, or authority of the 1st Respondent. He maintains that the gravamen of his claim lies in the unilateral removal from the payroll without notice or due process.
13. The Claimant has further submitted that the contents of the letter from the County Attorney dated 22nd April 2025 created the impression that he was a

State officer and a political appointee, thereby ousting the jurisdiction of the Public Service Commission. He argues that, in light of **Article 234(3) of the Constitution**, the Commission lacks jurisdiction to determine disputes concerning State officers, leaving him with no recourse other than to approach this Court.

14. Relying on the decision of *Ketter & 5 others v Nandi County Public Service Board & 3 others [2024] KEELRC 13252 (KLR)*, the Claimant submits that the issues raised herein involve contested questions of fact and law that cannot be conclusively determined at an interlocutory stage through a preliminary objection without the benefit of evidence.
15. The Claimant further argues that the reliefs sought are substantive in nature and fall outside the jurisdiction of the Public Service Commission. In support of this position, reliance is placed on the case of *Abdikadir Suleiman v County Government of Isiolo & another [2015] KEELRC 1522 (KLR)*.
16. On the issue of *locus standi*, the Claimant submits that it is a factual matter not amenable to determination as a pure point of law. He contends that the Court must interrogate the employment relationship, relevant correspondence, and documentary evidence, including payslips, in order to determine whether or not he has *locus standi* to enforce the contract.

17. With regard to joinder, the Claimant submits that he was employed by the 1st Respondent on behalf of the 2nd and 3rd Respondents, and that throughout his employment he served under the direction and control of the 3rd Respondent. He argues that the 2nd to 4th Respondents cannot now disown the employment relationship and shift liability solely to the 1st Respondent.

18. To this end, the Claimant maintains that the 2nd, 3rd and 4th Respondents are properly joined to these proceedings and that a valid cause of action has been disclosed against each of them. In support of this argument, the Claimant placed reliance on the case of *Fleur Investment Limited v Commissioner of Domestic Taxes & another [2018] eKLR*.

19. The Claimant has further posited that the Preliminary Objection raises contested factual issues and therefore fails to meet the threshold of a pure point of law.

Analysis and Determination

20. To my mind, the following issues fall for determination by the Court:

- a. Whether the Respondent's preliminary objection meets the legal threshold;***

b. Subject to (a), whether the Claimant’s suit is liable to be struck out on account of failure to exhaust available remedies, want of locus standi, and misjoinder of parties.

Legal threshold of the Preliminary Objection

21. The Preliminary Objection raised by the 2nd, 3rd and 4th Respondents is anchored on three principal grounds. First, they contend that both the Claimant’s Claim and the Notice of Motion, dated 21st October 2025, offend the doctrine of exhaustion of statutory remedies, on the basis that **Section 77 of the County Governments Act**, together with **Sections 45 and 85 of the Public Service Commission Act**, vest the Public Service Commission with the requisite appellate jurisdiction.

22. Second, the said Respondents assert that the Claimant lacks *locus standi* to enforce the contract against them, as there is a discrepancy between his name and that of the “employee” identified in the contract. Third, they argue that they have been improperly joined in these proceedings, not being parties to the contract of employment, and that consequently no cause of action lies against them.

23. It is well settled that a preliminary objection must be founded on a pure point of law. It is also trite that such an objection proceeds on the assumption that all the facts pleaded by the opposing party are correct and cannot be raised where the court must first ascertain any fact. This principle was affirmed in ***Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd (1969) EA 696***, where the Court stated as follows:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

24. And further, in the case of ***Avtar Singh Bhamra & Another vs Oriental Commercial Bank, Kisumu HCCC No.53 of 2004***, it was held as follows: -

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

25. Having considered the Preliminary Objection alongside the parties' respective submissions, it is evident that the issues raised therein cannot be determined without recourse to factual inquiry and evidential evaluation. For instance, the

question whether the 2nd, 3rd and 4th Respondents are parties to, or privy to, the Claimant's contract of employment is one of fact rather than law, and calls for examination of the relevant contractual documents and evidence on record.

26. Indeed, the Claimant has asserted in his submissions that the 1st Respondent employed him on behalf of the 2nd and 3rd Respondents, and that throughout his employment he operated under the direction and control of the 3rd Respondent. Such assertions cannot be conclusively determined on the basis of a Preliminary Objection and in the absence of a proper factual and evidential analysis.

27. Further, the issues as to whether there exists a discrepancy between the Claimant's name and that of the "employee" identified in the contract of employment, and whether the Claimant has a sustainable cause of action against the 2nd, 3rd and 4th Respondents, are likewise matters of fact that can only be resolved upon consideration of the evidence on record.

28. Needless to state, the instant Preliminary Objection is entangled with contested factual matters, and is not founded on a pure point of law.

29. On the distinction between a question of law and one of fact, I draw guidance from the exposition by Mativo J (as he then was) in the case of *J N & 5 others v*

Board of Management, St. G School Nairobi & another [2017] eKLR, where the learned Judge held that: -

“14. In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.

15. In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations.”

30. Borrowing from the above precedent, the Court finds that the instant Preliminary Objection cannot be determined by solely applying relevant legal principles to the interpretation of the law without reference to facts and evidence.

31. In the circumstances, the Preliminary Objection dated 21st November 2026, raised by the 2nd, 3rd, and 4th Respondents, having failed to meet the requisite legal threshold, is hereby overruled, with no orders as to costs.

DATED, SIGNED and DELIVERED at NYERI this 24th day of April 2026

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STELLA RUTTO

JUDGE

In the presence of:

No appearance	for the Claimant
Mr. Ashuba	for the 1 st Respondent
Mr. Njoroge instructed by Dr. Muthomi SC	for the 2 nd , 3 rd and 4 th Respondents
Ndati	Court Assistant

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 had 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.

STELLA RUTTO
JUDGE