

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

*(Before Hon. Lady Justice Monica Mbaru)*

**CAUSE NO. E134 OF 2025**

**SIMON CHARO MENZA.....CLAIMANT**

*VERSUS*

**BOARD CHAIRMAN, COAST WATER**

**WORKS DEVELOPMENT AGENCY..... 1<sup>ST</sup> RESPONDENT**

**CHIEF EXECUTIVE OFFICER, COAST WATER**

**WORKS DEVELOPMENT AGENCY.....2<sup>ND</sup> RESPONDENT**

**CHAIRPERSON, BOARD DISCIPLINARY COMMITTEE,  
COAST**

**WATER WORKS DEVELOPMENT AGENCY 3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF HUMAN RESOURCES, COAST WATER**

**WORKS DEVELOPMENT AGENCY..... 4<sup>TH</sup> RESPONDENT**

**RULING**

The ruling herein relates to the Notice of Preliminary Objections filed by the respondents and dated 23 December 2025. The

objections are that the claim herein should be struck out for the following reasons:

- a) The suit is prematurely before the court 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, which provides for disciplinary appeals.
- b) The suit be dismissed as it is filed in the wrong forum.
- c) There shall be a stay of proceedings pending the hearing and determination of the Preliminary Objections.

In response to these objections, the parties filed written submissions.

The respondents submitted that the claimant is seeking various declarations, including that the decision to summarily dismiss him was unlawful and in violation of his right to fair labour relations. The right to fair administrative action and the right to be heard have been breached. The claimant is seeking an order of reinstatement to his position with the Coast Water Works Development Agency as the deputy director, human resources management.

In the alternative, the claimant is seeking the following:

- a) Notice pay;
- b) Compensation for loss of employment;
- c) Costs of the suit.

The respondent thus submitted that, before the termination of his employment, the claimant was issued a notice to show cause on 2 July 2025. Investigations were conducted and a disciplinary process undertaken. The claim was given a hearing and a decision was taken to terminate his employment.

Under Article 159 of the Constitution, the claimant has failed to exhaust the dispute resolution mechanisms. Sections 9(1) to (3) of the Fair Administrative Act provide that a person aggrieved by any action should not move the court before addressing the complaint in the forum with original jurisdiction. In **William Odhiambo Kamogo & 3 others v Attorney General & 4 others [2020] eKLR**, the court held that the doctrine of exhaustion applies where a litigant aggrieved by a decision must address it in the primary forum. 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 provide for

appeals from decisions of the respondents. The claimant did not file an appeal.

The claim offends the doctrine of exhaustion and should be dismissed with costs.

The claimant submitted that the respondents' objections are legally untenable and misconceived. The court has jurisdiction under article 162(2) (a) of the Constitution and section 12 of the Employment and Labour Relations Court Act to hear all employment disputes. Such jurisdiction is original.

The claim challenges the summary dismissal of the claimant, who alleges the violation of his constitutional rights under articles 41, 47, and 50 and the breach of his legal rights under the Employment Act, the Fair Administrative Action Act, which matters should be addressed by the court only as held in **United States University (USIU) v Attorney General [2012] eKLR.**

The objections raised are not pure matters of law and need the call of evidence. In **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors [1969] EA**, the court established

the principles governing preliminary objections. These should be pure points of law. Whether the claimant was subjected to a lawful disciplinary process is a question of evidence and not for appeal before the Public Service Commission (PSC), as alleged by the respondents.

The claim submitted that the doctrine of exhaustion does not apply in this case. Under the PSC framework, the constitutional and legal violations cannot be addressed. The respondents have relied on section 74(4) of the Public Service Commission Act, yet his case relates to constitutional violations. The matter of appeal does not arise. In **Krystalline Salt Limited v Kenya Revenue Authority [2019] eKLR**, the court addressed the exceptional grounds upon which administrative action and judicial process should be distinguished. Where the remedy sought relates to constitutional violations, only the court can address. The objections should be dismissed.

### **Determination**

The respondents' objections are based on 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.

Section 74 of the Public Service Commission Act requires that any person who is aggrieved by a decision by the authorized officer should file an appeal to the PSC:

***(1) Any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act may appeal to the Commission.***

Section 8 of the Public Service Commission (State Corporations and Public Universities Disciplinary Appeals Procedure) Regulations 2025 provides that:

***(1) A person who is dissatisfied with the disciplinary control decision of a state corporation or public university may appeal to the Commission against that decision.***

In his claim, the claimant has registered the issues in dispute to be the following:

- a) Unfair termination of employment contrary to the Employment Act.
- b) Violation of the right to fair administrative action.
- c) Violation of fair labour practices.
- d) Violation of the right to a fair hearing.

Under the Memorandum of Claim, each claim is supported by various grounds thereof. The prayers sought relate to various declarations, including that the termination of employment was unfair and unlawful, and that the right to fair labour practices, fair administrative action, and a fair hearing was violated. The claimant is seeking an order of reinstatement.

In the written submissions, the respondents have addressed the matter that the doctrine of exhaustion has not been addressed by the claimant since the appeal procedures allowed under 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 have not been addressed.

However, the claims made call for an interpretation of constitutional rights, and the grounds are set out. In **Musyoka**

**v Independent Electoral and Boundaries Commission [2026] KEELRC 567 (KLR)**, the court emphasised that where there exist constitutional questions that cannot be addressed by a subordinate court or tribunal, the court must address particular constitutional questions.

In **Rai & 3 others v Rai & 4 others [2013] KESC 20 (KLR)** and **Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch [2019] KESC 11 (KLR)** the courts have held that where constitutional questions have been raised, however remote, the court has original jurisdiction.

In this case, the claimant, although an employee of a state agency and corporation, raises various grounds in his claim which call for constitutional application and interpretation. These require a call for evidence and hence are not pure questions of law that can be addressed on appeal before the PSC or under section 8 of the Public Service Commission (State Corporations and Public Universities Disciplinary Appeals Procedure) Regulations 2025. The court must address the claim

on the merits. An appeal to the PSC would not address the constitutional questions at hand.

**Accordingly, the objections raised are without merit. The court will hear the claim on merit. Hearing directions shall be issued. Costs to abide the outcome of the suit.**

Delivered in open court at Nairobi, this 23<sup>rd</sup> day of April 2026

**M. MBARŪ  
JUDGE**

**In the presence of:**

Court Assistant: Catherine and Omar

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