

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT ELDORET
PETITION NO. E012 OF 2024
(AS CONSOLIDATED WITH PETITION NO. E016 OF 2024)

BETWEEN

ZEDDY JEPTANUI KETTER 1ST PETITIONER
EMMANUEL KIPLAGAT TANUI 2ND
PETITIONER
EDWIN MASWAI 3RD
PETITIONER
EMMANUEL KIRWA 4TH PETITIONER
FAITH JERUTO 5TH PETITIONER
FRANCIS KIPKOSGEI 6TH PETITIONER
RUTH JEPNGETICH 7TH PETITIONER
AND 453 OTHERS PETITIONERS

VERSUS

THE NANDI COUNTY PUBLIC
SERVICE BOARD 1ST
RESPONDENT
THE GOVERNOR, NANDI COUNTY 2ND
RESPONDENT

**PUBLIC SERVICE COMMISSION 3RD
RESPONDENT**

**THE NANDI COUNTY ATTORNEY 4TH
RESPONDENT**

AND

**KENYA COUNTY GOVERNMENT
WORKERS UNION**

**PETITIONER/APPLICANT
COUNTY GOVERNMENT OF NANDI1ST
RESPONDENT**

**NANDI COUNTY
PUBLIC SERVICE BOARD 2ND
RESPONDENT**

JUDGMENT

Introduction

1. This judgment is in respect of two petitions. The first is Petition No. 12 of 2024 while the second is Petition No. E016 of 2024.
2. The two petitions were consolidated, the Court having found that the issues in the two petitions raise similar questions of fact and law arising from the same events.
3. In Petition No. E012 of 2024 the Petitioners are described as employees of the Nandi County Public Service Board,

seconded to various departments and regions within the Nandi County Government structure.

4. The 1st Respondent is an independent body established under Article 235 of the Constitution and Section 75 of the County Governments Act, 2012.
5. The 2nd Respondent is the County Executive of Nandi, established under Article 179 of the Constitution, and is responsible for the management and coordination of county government functions.
6. The 3rd Respondent is an independent constitutional commission established under Article 233(1) of the Constitution, mandated to manage staffing within the national government.
7. The 4th Respondent is the legal adviser to the County Government of Nandi, the 2nd Respondent herein and by extension, 1st Respondent.
8. In Petition No. E016 of 2024, the Petitioner, the Kenya County Government Workers Union, is a duly registered trade union representing employees who work in county governments and filed the petition on behalf and in respect of its members who were employees of the 1st Respondent.

9. The Respondents in Petition No. E016 of 2024 are the County Government of Nandi and the Nandi County Public Service Board.

Brief facts

10. It is the case of the Petitioners that on 15th September 2024, the 2nd Respondent issued a public communiqué alleging the existence of ghost workers and irregularly hired employees within Nandi County, affecting a significant number of employees, and indicating that such employees would be dismissed and removed from office with immediate effect.
11. That in the said communiqué, it was stated that due to the high wage bill, the County had engaged the Public Service Commission, the 3rd Respondent herein, to conduct a comprehensive audit of human resource practices, personnel records, and the staff payroll.
12. The Petitioners aver that on 16th September 2024, the 1st Respondent informed all the staff of Nandi County to collect letters, which upon receipt, they learned to be letters of revocation of their appointments. The contents of the letters, which were identical for all the affected employees, is reproduced below.

COUNTY GOVERNMENT OF NANDI

COUNTY PUBLIC SERVICE BOARD

OUR REF:NCPSB/Rev/2024/1697

27th August,2024

NAME:

ID No:

RE: REVOCATION OF APPOINTMENT

It has come to the attention of the Board that your details have been irregularly/un-procedurally entered into the County payroll and therefore drawing salary unjustifiably. This may have been done on the basis of an appointment letter which was issued without regard to the provisions of Section 66 of the County Governments Act which stipulates that;

'If a public office is to be filled, the County Public Service Board shall invite applications through advertisement and other modes of communication so as to reach as wide a population of potential applicants as possible and especially persons who for any reason have been or may be disadvantaged.'

Subsequently, by the powers conferred upon the County Public Service Board by Section 75 of the County Governments Act, 2012, the said letter is hereby revoked on account of irregularity.

Whereas every care has been taken in the course of the investigation and in making the decision, you are

nonetheless advised that if you are dissatisfied by the decision above, you may apply for review to the board within 14 days from the date of receipt of this letter.

Please note that when need arises for the filling of positions for which you qualify, if interested, you will have equal chance to apply and compete in an open, transparent and competitive recruitment process in strict compliance with the laid down legal provisions and procedures.

Signed

CS. Jeruto Nancy

Nandi County Public Service Board

The Petitioners' case in Petition No. E12 of 2024

13. The two petitions herein were filed as a consequence of the revocation of appointment letters.
14. The first Petition is dated 22nd September 2024 and was filed by Kipkorir, Kipkorir CK & Co Advocates on behalf of the 7 Petitioners named therein, on behalf of themselves and 453 others as listed. Some of the listed petitioners later withdrew from the suit while others were added through an amendment of the Petition.
15. The petition, which invokes various provisions of the Constitution, the County Governments Act, the Fair

Administrative Action Act, and the Employment Act, seeks the following reliefs:

- a. A Declaration that the Respondents have violated the Articles I, 2, 3, 6, 10, 19, 20, 21, 22, 23, 27, 28, 40, 47, 73, 174, 175, 176, 232, 235, 258(1) and 259(1) of the Constitution of Kenya, 2010.
- b. A Declaration that the 2nd Respondent is an accessory in breach of Articles I, 2,3,6 ,10,19, 20, 21, 22, 23, 27, 28, 40, 47, 73, 174, 175. 176, 232, 235, 258(1) and 259(I) of the Constitution by unlawfully arrogating himself the exclusive functions of the Nandi County Public Service Board contrary to Article 235 the Constitution of Kenya, 2010.
- c. A Declaration that the 2nd and 3rd Respondents are illegal aliens and have no role in decisions concerning staffing of County Governments and thus their decisions, audits, advisories or any form of agreement between the Public Service Commission and the Nandi County Executive is an unlawful interference of the 1st Respondent's constitutional mandate and therefore nullity ab initio.

- d. A Declaration that the 4th Respondent is in breach of his constitutional and statutory obligation to advise the 1st and 2nd Respondent on the correct legal position on these obvious points of law.
- e. An order of Certiorari be issued to bring into this Court and quash the purported revocation letters issued by the 1st Respondent to the Petitioners as void and of no legal effect.
- f. An order of Certiorari be issued to bring into this Court and quash the purported outcome of the comprehensive audit conducted by the 3rd Respondent as an illegality.
- g. This Court be pleased and do hereby grant an order of permanent Injunction, restraining the 1st Respondent, its representatives, employees, servants and/or agents or anybody working for it from purporting to revoke the appointments of the Petitioners on account of the audit report made by the 3rd Respondent.
- h. Any other or further relief that this Court may deem fit to grant.

i. The costs of this Petition be provided for.

16. The Petitioners aver that the backdated revocation letters dated 27th August 2024 contained a provision requiring them to apply for review within 14 days of receipt, which period had lapsed, thereby effectively estopping them from lodging appeals.
17. According to Petitioners the Respondents' actions were arbitrary and unlawful, and in direct violation of the Constitution of Kenya, the Employment Act, the County Governments Act, the Fair Administrative Action Act and all applicable laws governing public employment relationships.
18. It is the contention of the Petitioners that the 1st Respondent is improperly constituted as it lacks a chairperson and has fewer than five members whose terms have lapsed. In this regard, they state that requiring them to seek review before an improperly constituted Board, and to appeal to the 3rd Respondent who conducted the audit report resulting in the termination of their employment would render the entire review and appeal processes a sham and in breach of natural justice.

19. The Petitioners maintain that they were lawfully employed in accordance with established procedures and applicable laws, and as such the Respondents have no lawful basis to terminate their employment without individual reasons and due process.
20. The Petitioners assert that the actions of the Respondents are discriminatory and target employees deemed to have been irregularly hired even though they had undergone a similar recruitment process as their retained colleagues. That the same was without objective criteria, thereby amounting to disguised unlawful redundancy.
21. In addition, the Petitioners aver that they had previously been subjected to staff audits sanctioned by the 1st Respondent which never flagged them as having been employed irregularly, having been in employment for nearly ten years.
22. It is contended that the unlawful and arbitrary action of the Respondents has occasioned gross injustice to the employment and constitutional rights of thousands of Nandi County employees who are now unlawfully rendered out of employment.

23. The Petitioners aver that they are legitimately apprehensive that the Respondents, and the broader county governance structure, may continue acting ultra vires in employment decisions unless restrained by this Court.

The Petitioners' case in Petition No. E016 of 2024

24. In Petition No. E016 the Petitioner seeks the following orders:
1. A declaration that the 2nd Respondent's decision to revoke the appointments of the Petitioner's members unconstitutional, is unlawful, unprocedural, and unfair for being a violation of the Petitioner's members' Constitutional rights to under Articles 27.41, and 47 of the Constitution.
 2. A declaration be and is hereby made that the impugned revocation of the Petitioner's members' appointments vide the letters dated 27th August, 2024 without any demonstrated reasonable and justifiable cause is inimical to Article 47 of the Constitution of Kenya and thus unconstitutional as it amounts to administrative action that is inefficient, unlawful, unreasonable and procedurally unfair.

3. A declaration that the 2nd Respondent's directive and/or decision to unilaterally revoke the appointment of the Petitioner's members constitutes a breach of the affected members' contracts of employment with the Respondents and an unfair and unlawful dismissal from employment.
4. A conservatory order staying the implementation of the 2nd Respondent's decision contained in its letters dated 27th August, 2024.
5. An order restraining the 2nd Respondent by themselves, their agents or anyone under their instructions from frustrating or in any other manner unlawfully interfering with the Petitioner's members' appointments to various positions within the 1st Respondent County.
6. An order of Certiorari be and hereby issued bringing into this Honorable Court and quashing the Respondents' decision contained in their letters dated 27th August, 2024 communicating the revocation of the Petitioner's members' appointments.
7. Conservatory orders restraining the Respondents herein, their agents, officers, servants, and/or persons

acting under their instructions from proceedings with the planned recruitment exercise commenced by way of advertisements dated 4th October, 2024, 16th October, 2024, and 30th October, 2024.

8. A mandatory order compelling the Respondents to compensate the affected members of the Petitioner by back-paying the salaries of the said Petitioner's members affected by the impugned unlawful revocation of appointments from 27th August, 2024.
9. An order of damages to the Petitioner's members for breach of their contracts of employment by the Respondents and for unlawful and unfair dismissal from employment.
 - a) Costs and interest on orders (8) and (9) above at Court rates till payment in full.
 - b) The costs of this Petition be borne by the Respondents
 - c) The Honorable Court be pleased to issue any other further orders and grant any other relief that it may deem fit, just, appropriate, and fair to grant in the circumstances.

The Respondents' case

25. The 1st Respondent opposed the Petition vide a Replying Affidavit sworn on 4th October 2024 by CS Nancy Jeruto, the 1st Respondent's Acting Secretary. She deposed that the Petition is devoid of merit, lacking evidential support and based on a misunderstanding of employment laws and Article 47 of the Constitution.
26. Relying on County Public Service Human Resource Manual 2013 and section 66 of the County Governments Act, the 1st Respondent avers that for a public office to be filled, there ought to have been a vacancy that is duly advertised, a shortlisting, invitation for interviews, offer letters issued and subsequently employment letters issued to the successful candidates.
27. It is the 1st Respondent's contention that in this case, no advertisements or valid contracts have been produced to demonstrate an employer-employee relationship between the Petitioners and the 1st Respondent; that the documents presented by the Petitioners amount only to offer letters insufficient to establish the existence of an employment relationship.

28. The 1st Respondent avers that vide a letter dated 8th February 2024, the Salaries and Remuneration Commission wrote to the Council of Governors on the convening of the third National Wage Bill Conference with the intention of developing inter-governmental policies and action plans aimed at reducing the wage bill to 35% of revenue in line with the provisions of the Public Finance Management (PFM) Regulations 2012 by the year 2028.
29. It is further averred that the Third National Wage Bill Conference held between 15th to 17th April 2024 adopted resolutions requiring the National and County Governments to implement measures to reduce wage expenditure and address irregular employment practices including fake certificates.
30. It is the 1st Respondent's assertion that in implementing the resolutions of the said conference, the County Secretary wrote to the 3rd Respondent seeking assistance in carrying out a staff and payroll audit as part of actualizing the 35% wage bill directive.
31. That the County Government of Nandi consequently engaged the 3rd Respondent to conduct an independent human

resource audit to assess compliance with policies and procedures.

32. It is deposed that pursuant to the engagement the 3rd Respondent conducted a full Human Resource Audit for the period 1st July 2022 to 30th April 2024 and published a report of its finding dated 1st August 2024 which report gave a detailed snapshot of the human resource status of Nandi County. The report disclosed that over 1,731 persons were receiving salaries on the integrated personnel and payroll database (IPPD) but were not captured or recognized as employees in the register provided by County Departments.
33. It is averred that the audit report under its Appendices identified all the officers receiving payments under the IPPD system vis a vis a segmented list of the offices receiving payments irregularly from the IPPD system and pinpointed personnel receiving payment without proper authorization dubbed 'ghost workers'.
34. The 1st Respondent contends that it carried out preliminary investigations which disclosed that a number of persons were in the payroll irregularly as it did not authorize the issuance of appointment letters to the said persons.

35. The 1st Respondent further contends that pursuant to its powers under section 75 of the County Governments Act, it revoked the resultant appointment letters and communicated the same to the County Executive.
36. The 1st Respondent asserts that in the revocation letters issued, the affected individuals were duly informed of the reasons for the revocation and advised of their right to seek a review by filing an application before the Board within fourteen (14) days.
37. The 1st Respondent states that the assertion by the Petitioners that they were not accorded an opportunity to be heard before their employment letters were revoked, cannot stand as the 2nd Respondent established that the employment letters of the Petitioners were irregularly issued and there was need to revoke the appointment letters first to avoid further loss of public funds.
38. In response to the Petitioners' allegation that the 1st Respondent is not properly constituted, the deponent asserted that the 1st Respondent is an independent entity and was, at the time of revoking the Petitioners' appointments, properly constituted. It is averred that at the

time it revoked the employment contracts of the Petitioners the Board comprised five members, including the Secretary, the Vice-Chairperson (serving as Acting Chairperson) and three other members.

39. The 1st Respondent thus urged the court to dismiss the Petition with costs.
40. The 2nd Respondent opposed the Petition through a Replying Affidavit sworn on 4th October 2024 by Francis Kipkemboi Sang, the County Secretary and Head of County Public Service, Nandi County, in which it is deposed that the 2nd Respondent had been improperly enjoined in these proceedings, as its office plays no role in the appointment or revocation of employment within the Nandi County Public Service.
41. By and large, the 2nd Respondent reiterated the averments made by the 1st Respondent in the Replying affidavit filed in response to the Petition.
42. The 3rd Respondent filed a Replying Affidavit dated 8th October 2024, sworn by Paul Famba, its Chief Executive officer. He deposes that sometime in April 2024, the 3rd Respondent received a request from the County Government

of Nandi to assist in undertaking an independent staff and payroll audit for the period 1st July 2022 to 30th April 2024.

43. Mr. Famba deposes that the request was made in recognition of the 3rd Respondent's constitutional mandate to investigate the organization, administration and personnel practices in the public service.
44. The 3rd Respondent contends that, pursuant to Paragraph 32 of the Fourth Schedule to the Constitution, one of the functions of National Government institutions is to provide capacity building and technical assistance to County Governments, and that this matter constitutes an instance in which a County Government sought such technical assistance from a National Government institution.
45. The 3rd Respondent avers that upon accepting the request to assist the County Government of Nandi in the staff and payroll audit, an inaugural meeting was held on 13th May 2024 attended by senior County staff and a team from the 3rd Respondent and that during the meeting, teams were constituted, including a Steering Committee comprising County Executive Committee Members with the County Executive Committee Member for Public Administration as

Chairperson and the Chief Officer for Public Administration as Secretary.

46. It is the 3rd Respondent's assertion that the audit exercise was not undertaken on its own volition but was a joint exercise initiated by the County Government of Nandi, which provided the necessary documents for analysis by the 3rd Respondent's technical team.
47. It is deposed that the issue under consideration related to the termination of contracts of officers who were previously serving on contract terms and whose terms had been translated to permanent and pensionable terms.
48. According to the 3rd Respondent an analysis of the IPPD system by the technical team established that:
 - a) The average number of staff in the IPPD staff registers over the audit period was 5,600.
 - b) The average number of staff on the IPPD payroll was 4,844.
 - c) Information submitted by County departments indicated that the total number of staff in the departments was 3,113.

- d) The IPPD register reflected 2,366 staff on short-term contracts.
- e) There were 1,166 staff whose contracts had been renewed, out of whom 557 had their terms of service translated from contract to permanent and pensionable terms without evidence of approval by the County Public Service Board.
- f) Of the 609 officers who remained on contract terms in the IPPD register, 230 were reflected in the payroll as serving on permanent and pensionable terms without evidence of Board approval.
- g) In total, 787 officers who previously served on contract terms had their terms translated to, or reflected as, permanent and pensionable in the IPPD payroll without approval by the County Public Service Board.

49. The deponent states that having established the above inconsistencies, and noting disparities between the IPPD register, payroll and departmental records, it was recommended that:

a) The County Government conduct a headcount to determine the actual number of employees.

b) The County Government determine the status of the 557 officers whose terms had been translated, and the 230 officers serving on contract but reflected as permanent and pensionable, without Board approval.

50. The 3rd Respondent maintains that it merely made findings and issued recommendations on the appropriate course of action, leaving the ultimate decision to the County Government. It stated that it acted in good faith in the provision of the technical assistance.

The rejoinder

51. In rejoinder, the Petitioners filed a further affidavit sworn on 13th October 2024 by Zeddy Jeptanui Keter, the 1st Petitioner, wherein she avers that the Petitioners have established an employment relationship sufficient to invoke the jurisdiction of this Court, as the 1st Respondent has not denied that the Petitioners have been employees drawing salaries for years.

52. The Petitioners contend that the 1st Respondent is seeking to shift blame for its own failures, particularly in relation to

recruitment procedures which fall exclusively within its mandate.

53. They further averred that the 1st Respondent admits that the audit process was initiated and driven by the 2nd Respondent, contrary to the requirement of independence in decision-making. In addition, that the audit conducted by the 3rd Respondent was prompted by the 2nd Respondent, with minimal involvement of the 1st Respondent thereby undermining its statutory mandate.
54. The Petitioners contend that the 1st Respondent admitted to issuing revocation letters without due process relying entirely on the audit report, contrary to the law.
55. They further contend that due process cannot be deferred to an appeal stage and must be observed at the initial decision-making stage.
56. The Petitioners aver that no law permits abrupt termination and removal from payroll without adherence to due process in a constitutional democracy.

The submissions

57. Pursuant to the directions of the Court, the Petition was canvassed by way of written submissions. All parties filed their submissions which they highlighted on 3rd November 2025.

Petitioners' submissions in E012 of 2024

58. In their submissions dated 24th September 2025, the Petitioners identified the issues for determination are: -

- i. Whether the 1st Respondent had legal capacity to exercise its legal mandate by unqualified persons as 'acting secretary' and 'acting chairperson'.
- ii. Whether the 1st Respondent complied with the express Article 236 of the Constitution of Kenya and section 76 of the County Government Act 2012 express prohibition rule.
- iii. Whether the 1st Respondent complied with the Constitution of Kenya 2010, Fair Administrative Action Act 2015 and the applicable laws in revoking the Petitioners' employment letters.

- iv. The legality of the role of the 2nd and 3rd Respondents in the revocation of the Petitioners' employment contracts.
- v. Legality of the Petitioners' employment contracts.
- vi. The legality of the 3rd Respondent's comprehensive human resource audit being a power reserved constitutionally for the Auditor-General as an independent office.
- vii. The legal implications of the 4th Respondent's failure to advise the 1st and 2nd Respondents on obvious points of law in failing to provide a written legal opinion.
- viii. Whether the Respondents are liable in damages for breach of the Petitioners' constitutional rights, and if so, the quantum thereof.

59. On the first issue, the Petitioners submit that at all material times, the 1st Respondent was operated by persons designated as "acting secretary" and "acting chairperson." They therefore contend that this rendered the 1st Respondent improperly constituted and therefore lacking legal capacity to make decisions capable of legal effect or appeal.

60. Relying on the case of ***Macfoy v United Africa Company Ltd. [1961] 3 ALL E.R 1169***, the Petitioners submitted that it is an established legal tradition in common law that an improperly constituted body has no legal capacity to make any lawful decisions and therefore decisions made by such bodies as the 1st Respondent herein are a nullity in toto and legally incompetent as though they had never been made.
61. In this regard, the Petitioners while citing section 58 of the County Governments Act which prescribes the composition of a County Public Service Board averred that the law does not recognize “acting” officials in the constitution of the Board, and that the presence of such officials rendered the 1st Respondent unlawfully constituted.
62. The Petitioners further aver that the acting secretary was seconded from the County Executive, thereby undermining the independence of the Board and that the acting chairperson assumed office without undergoing the statutory appointment process.
63. It is therefore the Petitioners’ submission that in the absence of approval by the County Assembly, the 1st Respondent

lacked the legal capacity to act, rendering its decisions null and void.

64. On the issue whether the 1st Respondent complied with Article 236 of the Constitution and section 76 of the County Governments Act, the Petitioners submit that both provisions impose a mandatory obligation on the County Public Service Board to observe the principles of natural justice in disciplinary processes.
65. The Petitioners maintain that the impugned revocations were undertaken without notice, hearing or due process and were therefore in direct violation of the mandatory constitutional and statutory safeguards. On this basis, the Petitioners submitted that the decision of the 1st Respondent is unlawful and void for contravening Article 236 of the Constitution and section 76 of the County Governments Act.
66. On the third issue, the Petitioners maintain that the impugned decision violated constitutional principles governing public administration, particularly Articles 10, 47 and 73 of the Constitution. The Petitioners further relied on section 4 of the Fair Administrative Action Act, which gives effect to Article 47 requiring that a person affected by

administrative action be given prior notice, an opportunity to be heard and reasons for the decision.

67. It is the submission of the Petitioners that the 1st Respondent failed to comply with these requirements and did not accord the Petitioners any notice, hearing or participation prior to revoking their employment.
68. Referring to the 1st and 2nd Respondents' Replying Affidavits the Petitioners submit that the Respondents admitted that the Petitioners were not notified, summoned or heard before the decision and that no due process was followed prior to the revocation of their employment contracts.
69. In addition, the Petitioners submitted that the audit report did not recommend termination of employment making reference to the affidavit of the 3rd Respondent.
70. The Petitioners submit that no further audit or verification was undertaken by the 1st and 2nd Respondents to independently verify the 3rd Respondent's findings, and that the decision to revoke the employment was based solely on the audit report.
71. On the fourth issue, the Petitioners contend that the decision to revoke their employment was not independently made by

the 1st Respondent but was driven by the 2nd and 3rd Respondents. It is the Petitioners submission that the communique of 5th September 2024 and the audit report, demonstrate the role played by the 2nd Respondent in initiating and coordinating the process and the 3rd Respondent in conducting the audit relied upon.

72. According to the Petitioners, the involvement the 2nd Respondent violated statutory and constitutional independence of the 1st Respondent as provided under section 59A of the County Governments Act which requires the County Public Service Board to operate free from direction or control of any person or authority.
73. The Petitioners argue that institutional independence is a fundamental principle, and decisions must be made exclusively by the legally mandated body.
74. Relying on the decisions in ***Gachuri v Attorney General & another; Kenya Judges Welfare Association & another (2024) eKLR, Re the Matter of the Interim Independent Electoral Commission (2011) eKLR, and Communications Commission of Kenya and 5 Others v Royal Media Services and 5 Others (2014) eKLR***, the

Petitioners submitted that independence serves as a safeguard against external interference particularly by the executive.

75. The Petitioners further argue that the participation of the 2nd Respondent was unlawful as Article 183(1) of the Constitution and section 30 of the County Governments Act do not confer any role in county public service staffing on the 2nd Respondent. They submit that staffing functions are exclusively vested in the 1st Respondent under Article 235 of the Constitution and section 59 of the Act.
76. In addition, the Petitioners submit that the role of the 3rd Respondent is limited under Article 234 to advisory functions and the hearing of appeals and that it has no mandate to conduct staff audits or make decisions relating to county employment. The Petitioners aver that the 3rd Respondent admitted that its audit report was not determinative and required further investigation before any action could be taken.
77. The Petitioners therefore submit that the involvement of the 2nd and 3rd Respondents amounted to unlawful interference,

undermined the independence of the 1st Respondent and rendered the decision-making process legally incompetent.

78. On the fifth issue as to the legality of their employment contracts, the Petitioners submitted that the 1st Respondent issued employment letters to each of the Petitioners, many of whom have served for decades under successive contract renewals and were continuously paid salaries up to 28th August 2024 when their employment was terminated.
79. It is submitted that the 1st Respondent does not dispute issuing the employment letters but contends that the Petitioners were unlawfully recruited on the basis that their appointments were not advertised and therefore allegedly unprocedural and void.
80. The Petitioners submit that this allegation is made in general terms without any evidentiary basis or particularization of which Petitioners were allegedly unlawfully recruited or the specific circumstances of such recruitment.
81. It is the submission of the Petitioners' that the 1st Respondent has erroneously conflated "competitive recruitment" with "advertisement", while neither the Constitution nor the County Governments Act imposes

advertisement as an absolute or mandatory requirement for all public appointments. It is submitted that Articles 10, 232 and 235 of the Constitution emphasize values of transparency, accountability, merit and fair competition but do not expressly require advertisement in every instance of recruitment.

82. The Petitioners further submit that Article 232 permits fair competition and merit as guiding principles but also accommodates inclusivity, representation and flexibility in public service appointments. Additionally, that the Constitution does not eliminate alternative lawful recruitment mechanisms such as internal deployment, confirmation or headhunting where justified.
83. It is further submitted that section 59 of the County Governments Act vests the 1st Respondent with wide powers to establish offices and appoint persons to the county public service, while section 60 allows the Board discretion in establishing offices based on public interest considerations.
84. The Petitioners submit that the 1st Respondent has failed to demonstrate with specificity any illegality in the recruitment of the Petitioners as no evidence has been tendered beyond

a general assertion that the appointments were not advertised.

85. It is further submitted that the burden of proof rests on the 1st Respondent, as the issuing authority of the employment letters, to demonstrate any alleged irregularity, fraud or illegality in the recruitment process.
86. The Petitioners submit that they were openly engaged, served for long periods were remunerated and were treated as employees of the 1st Respondent, including being issued with employment-related benefits.
87. It is therefore the Petitioners submission that the 1st Respondent has failed to impeach the legality of their employment contracts. That its allegations of non-advertisement are unsupported, generalized and insufficient to render the employment contracts void.
88. On the legality of the 3rd Respondent's comprehensive human resource audit, the Petitioners aver that the audit conducted by the 3rd Respondent is a power reserved constitutionally for the Auditor-General as an independent office. The Petitioners further submit that the 3rd Respondent has no constitutional or statutory mandate to conduct audits

affecting County Public Service Boards or Human Resource matters as its role under Article 234 is limited and it cannot assume functions that may compromise its constitutional mandate. It is therefore submitted that the only lawful authority to conduct audits involving public funds and public entities is the Auditor-General under Article 229 of the Constitution and the Public Audit Act.

89. The Petitioners argue that if an audit or verification of staff establishment was necessary, the 1st Respondent ought to have engaged the Auditor-General or other lawful mechanisms such as reputable audit firms, and then independently assessed the findings. They contended that Section 9 of the Public Audit Act allows the Auditor-General to conduct investigations on its own initiative or upon complaint, which could have been invoked if concerns existed regarding staffing.
90. The Petitioners also submit that the Respondents failed to seek legal advice from the County Attorney or the Attorney-General regarding the legality of the employment contracts, despite these offices being the constitutionally and statutorily mandated legal advisers. It is submitted that the

fact that no such legal opinion was sought demonstrates disregard for proper legal procedure in making the impugned decision.

91. It is further the submission of the Petitioners that the 1st Respondent is an independent body required to exercise its mandate without external interference and reliance on the 3rd Respondent's report amounted to improper external influence.
92. The Petitioners submit that the actions of the Respondents having been undertaken without reliance on proper constitutional audit or legal advisory mechanisms, was rendered legally defective.
93. On the seventh issue as to the legal implications of the 4th Respondent's failure to advise the 1st and 2nd Respondents, the Petitioners submit that under Section 7 of the Office of the County Attorney Act, 2020, the 4th Respondent as the principal legal adviser to the County Government failed to give written legal opinion despite the legal issues raised in the matter and despite the office being enjoined in these proceedings.

94. It is the submission of the Petitioners that the County Attorney holds a central role in advising the County Government on legal compliance and that the 4th Respondent herein should have acted to prevent unconstitutional actions by the 1st and 2nd Respondents.
95. The Petitioners contend that the 4th Respondent failed to intervene or provide guidance thereby allowing violations of due process and constitutional rights to occur.
96. It is further submitted that there is no record of legal advice having been provided and the failure amounts to abdication or neglect of duty. The Petitioners argue that although the Act provides certain immunities to the County Attorney, such immunity does not extend to abuse of office or dereliction of duty.
97. The Petitioners thus submitted that the 4th Respondent bears responsibility for failing to discharge his legal duty and is liable for the resulting breaches of the Petitioners' constitutional rights to fair administrative action.
98. On the last issue, the Petitioners submit that the termination of their employment was unlawful, unfair and

unconstitutional and as a result, they ought to be compensated.

99. They submitted that the only reason advanced by the 1st Respondent for the revocation of their employment contracts was failure to advertise which in their view, does not constitute a valid ground for dismissal.
100. The Petitioners thus pray for orders of reinstatement and compensation under section 49 of the Employment Act and section 12(3)(vii) of the Employment and Labour Relations Court Act.
101. The Petitioners further seek exemplary damages on the basis that the Respondents acted arbitrarily and unconstitutionally.
102. In conclusion, the Petitioners pray for reinstatement with full benefits, payment of arrears and allowances and exemplary damages equivalent to twelve months' salary.

Petitioner's submissions in E016 of 2024

103. The Union filed its submissions dated 22nd September 2025 through the firm of *Njuguna Mwaura & Company Advocates* and submitted on the following issues: -

- i. Whether there exists an employer–employee relationship or contract of service between the members of the Petitioner whose appointments were revoked and the 2nd Respondent herein
- ii. Whether the 2nd Respondent’s impugned unilateral revocation of the employment contracts and/or appointments of the Petitioner’s affected members by the 2nd Respondent herein is justified, lawful, procedural, regular and fair.
- iii. Whether, consequently, the 2nd Respondent herein has violated the constitutional rights and freedoms of the members of the Petitioner affected by its impugned revocation of their employment
- iv. Whether the Petitioner is entitled to the reliefs sought in the Petition.

104. On the first issue, the Petitioner submits that it annexed, to the supporting affidavit, appointment letters of diverse dates bearing the 2nd Respondent’s letterhead and duly executed by the affected members. It is contended that the Respondents’ assertion that the said documents constitute mere offer letters and payment slips is baseless and

misconceived. The Petitioner maintains that the annexed documents are evidence of valid and binding contracts of employment between the affected members and the Nandi County Public Service Board, thereby establishing a lawful employer–employee relationship.

105. On the second issue, the Petitioner submits that the Respondents have failed to provide reasonable, cogent or justifiable basis for revoking otherwise lawful and valid contracts of employment. It is argued that the impugned decision was made arbitrarily and without adherence to established legal and procedural safeguards.

106. The Petitioner further submits that the Respondents have not adduced any evidence to demonstrate that any of the affected members submitted fraudulent academic or professional certificates prior to their appointment. It is contended that the staff verification exercise which the Respondents admit was conducted, did not identify any member of the Petitioner as having submitted fake credentials or having been irregularly entered into the county payroll. In this regard, the Petitioner relies on ***Kiage v Public Service Board - Kisii County Government & 2***

Others (Cause E087 of 2024) [2025] KEELRC 249 (KLR).

107. While citing Section 75 of the County Governments Act, which permits the revocation of decisions in cases of irregularity or fraud, the Petitioner submits that no evidence has been presented to demonstrate that any disciplinary action or process has been initiated against the affected members for their alleged involvement in such irregularities. It is further argued that this omission undermines the credibility and legality of the Respondents' justification for the impugned revocation, particularly in light of the recommendations contained in the 2nd Respondent's letter dated 28th August 2024.
108. On the third issue, the Petitioner submits that the impugned revocation of appointments violates the affected members' constitutional rights to dignity, fair labour practices and fair administrative action, as guaranteed under Articles 28, 41, and 47 of the Constitution of Kenya, 2010. In particular, the Petitioner contends that the 2nd Respondent violated the members' right to human dignity under Article 28 by revoking their appointments without prior notice,

consultation, or engagement. It is submitted that this abrupt action disoriented and destabilized the affected members financially, rendering them unable to meet their personal and familial obligations, including the payment of school fees and provision for basic needs. The Petitioner asserts that the revocation occasioned significant emotional, mental and psychological distress, thereby necessitating the intervention of this Honourable Court.

109. The Petitioner further submits that the 2nd Respondent, by arbitrarily, whimsically and irrationally revoking the appointments in contravention of the law, the applicable collective bargaining agreement and the governing terms of engagement, violated the affected members' constitutional right to fair labour practices and fair remuneration under Article 41(1) and (2)(b). It is contended that, upon issuance of appointment letters, the affected members acquired a legitimate expectation that their employment would not be terminated without prior notice, disclosure of reasons and an opportunity to be heard.
110. In addition, the Petitioner submits that the impugned decision violated Article 47 of the Constitution, as it failed to

meet the threshold of fairness, lawfulness, and reasonableness in administrative action. The Petitioner maintains that the 2nd Respondent acted unreasonably by failing to consider the foreseeable socio-economic impact of the revocation on the affected members, particularly in light of prevailing economic conditions, before proceeding to terminate their employment without communicating the reasons or affording them an opportunity to respond.

111. Lastly, on the issue whether the Petitioner is entitled to the reliefs sought in the Petition, it is submitted that the Petitioner has demonstrated that the Respondents acted arbitrarily, unreasonably, irregularly and unlawfully in revoking the appointments of its members and is thus entitled to the grant of the reliefs it is seeking.

1st and 2nd Respondents' submissions

112. In their submissions dated 3rd December 2025, the 1st and Respondents framed the issues for determination to be: -
- i. Whether a lawful employer-employee relationship existed between the Petitioners and the Respondents.

- ii. Whether the 2nd Respondent's action of revoking the appointments was lawful and justified under Section 75 of the County Governments Act, 2012
 - iii. Whether the Petitioners' right to fair administrative action under Article 47 of the Constitution was violated.
 - iv. Whether the Petitioners have exhausted the available statutory remedies.
 - v. Whether the Petitioners are entitled to the reliefs sought.
113. On the first issue, the 1st and 2nd Respondents submitted that the employment contracts relied upon by the Petitioners were invalid as they were not anchored on a lawful recruitment process. They contended that employment in the Public Service is governed by strict statutory procedures under sections 66 and 67 of the County Governments Act, 2012, which require advertisement, shortlisting, interviewing and selection by the County Public Service Board.
114. The 1st and 2nd Respondents submit that the Petitioners have failed to demonstrate that their recruitment complied with these mandatory requirements. That in the absence of such

evidence, the appointment letters amounted to nullities incapable of creating any legal rights. In support of this position, reliance was placed on the decision in ***Noa Investment Limited v County Government of Nyamira [2021] KEHC 1493 (KLR)*** and ***Evans Kipchumba Lokabei v County Public Service Board Baringo County Government & another [2020] KEELRC 1900 (KLR)***

115. The Respondents further submitted that the March 2023 staff verification exercise did not validate or regularize the recruitment process as it was limited to establishing skills and not the legality of appointment.
116. The 1st and 2nd Respondents thus submit that the Petitioners have failed to establish the existence of a lawful employer-employee relationship.
117. On the second issue, the 1st and 2nd Respondents submit that pursuant to section 75 of the County Governments Act, the 2nd Respondent acted within a lawful statutory mandate. It is their submission that following investigations which revealed that certain individuals were irregularly placed on the payroll without due process, the 1st Respondent was obligated to take corrective action. In this regard, the 1st and 2nd

Respondents submit that the revocation of the impugned appointments was lawful, justified and undertaken in exercise of statutory powers.

118. On the issue whether the Petitioners' right to fair administrative action under Article 47 of the Constitution was violated, the 1st and 2nd Respondents submitted that the Petitioners' reliance on Articles 27, 28, 41, and 47 of the Constitution is misguided as constitutional protections cannot be invoked to legitimize illegality.
119. It is the 1st and 2nd Respondent's submission that since the Petitioners did not demonstrate a lawful employment relationship, no enforceable constitutional or statutory rights arose in their favor. In addition, it is submitted that the Petitioners failed to establish any actionable violation of rights and had no legitimate legal interest capable of protection.
120. The 1st and 2nd Respondent Respondents maintain that granting the orders sought would amount to compelling the Respondents to perpetuate illegality, contrary to Article 232 of the Constitution on efficient and economical use of public resources.

121. On the issue whether the Petitioners have exhausted the available statutory remedies, the 1st and 2nd Respondents submitted that the Petition is premature and an abuse of the court process for failure to exhaust statutory dispute resolution mechanisms. Relying on ***Anthony Miano & others v Attorney General & others [2021] KEHC 12687 (KLR)***, the 1st and 2nd Respondent submitted that where legislation provides an internal dispute resolution mechanism, parties are obligated to first exhaust it before approaching court.
122. It is submitted that the Petitioners failed to utilize both the 14-day internal review process and the appeal mechanism under section 77 of the County Governments Act to the Public Service Commission and that no exceptional circumstances had been demonstrated to justify bypassing these mechanisms.
123. The Respondents further submitted that section 77 of the County Governments Act provides that any person aggrieved by a decision of a County Public Service Board may appeal to the Public Service Commission. They contended that the Petitioners did not lodge any such appeal and that their

failure to do so renders the Petition premature and an abuse of the court process.

124. The 1st and 2nd Respondents further contended that the Petitioners had not demonstrated, by way of evidence, that the Public Service Commission lacked jurisdiction to determine the dispute. On that basis, they submitted that this Court lacks primary jurisdiction to entertain the Petition for failure to comply with the doctrine of exhaustion and constitutional avoidance.
125. Lastly, on the issue whether the Petitioners are entitled to the reliefs sought, the 1st and 2nd Respondents submitted that the Petitioners are not entitled to the discretionary remedies of this Court arguing that granting the orders sought would amount to sanctioning an illegality.
126. It is contended that the actions of the 1st and 2nd Respondents were lawful, reasonable and necessary to correct serious irregularities pursuant to section 75 of the County Governments Act, 2012, and that the process adopted included an opportunity for review which the Petitioners failed to utilize.

127. It is thus submitted that the Petition is incompetent for failure to exhaust statutory remedies, lacks merit and ought to be dismissed with costs.

3rd Respondent's submissions

128. In its submissions dated 22nd October 2025, the 3rd Respondent submitted on the following issues: -

- i. Whether the 3rd Respondent had powers to conduct a human resource audit.
- ii. Whether the 3rd Respondent had powers to undertake an audit in respect of the Nandi County Government
- iii. Whether the Petitioners have demonstrated that the revocation of their appointments were based on the recommendations of the 3rd Respondent.

129. On the first issue, the 3rd Respondent submitted that under Article 234 of the Constitution, it is responsible for investigating, monitoring and evaluating the organization, administration and personnel practices which is what human resource audit constitutes. The 3rd Respondent submits that in undertaking this mandate, it reviews public entities

processes to determine compliance with existing laws policies and procedures and where gaps are identified, it makes recommendations. The 3rd Respondent thus submits that it has the mandate to conduct human resource audit.

130. On the second issue, the 3rd Respondent submitted that it has the mandate to conduct human resource audit. This, according to the 3rd Respondent is different from what the Auditor General does which is financial audits. It submits that there is no encroachment on the Auditor General's mandate.
131. It is the 3rd Respondent's submission that, from the audit report, it is mandated to conduct human resource audits in public institutions, including national government institutions. The 3rd Respondent submits that the audit in question was conducted at the behest and with the participation of officers from the 1st Respondent.
132. The 3rd Respondent submits that it could not have independently commenced an audit against the 1st Respondent without a formal request and co-operation from the County Government.
133. It is the 3rd Respondent's submission that the audit was undertaken for the purpose of assessing the status of human

resource management practices within the County Government of Nandi in relation to compliance with applicable laws, policies, and procedures. That from the observations and recommendations, several gaps in human resource management were identified which the County Government was required to address and improve upon.

134. The 3rd Respondent further submits that in the report, it did not recommend that the employment contracts of the Petitioners be terminated. That the audit having been conducted at the behest of and in conjunction with the 1st Respondent herein, the actions of the 3rd Respondent were lawful.
135. Lastly, on the issue of whether the Petitioners have demonstrated that the revocation of their appointments was based on the recommendations of the 3rd Respondent, it is submitted that the Petitioners have failed to prove that their termination was founded on the findings of the audit conducted by the 3rd Respondent.
136. The 3rd Respondent submits that the audit report was made available to all parties, yet the Petitioners have not identified any specific paragraph therein that supports their allegation.

The 3rd Respondent further submits that both the 1st and 2nd Respondents have expressly denied relying on the audit report as the basis for the revocation of the Petitioners' appointments.

The 4th Respondent's submissions

137. In his submissions, the 4th Respondent submits that the Petition offends Order 1 Rule 13 of the Civil Procedure Rules, 2010 on the basis that the 1st Petitioner, Zeddy Jeptanui, lacked proper authority to plead and swear affidavits on behalf of the other Petitioners.
138. The 4th Respondent submits that no valid authority was filed and therefore the other 459 Petitioners were improperly before the Court, depriving the Court of jurisdiction to hear their claims.
139. It is further submitted that the purported authority documents are defective, vague and unclear with inconsistencies such as missing identification numbers and ambiguous consent forms that only reflect contributions rather than express authority to litigate. In support of

position, reliance was placed on ***Kahindi Katana Mwango & Another v Canon Assurance Ltd (2013) eKLR.***

140. On the doctrine of exhaustion, the 4th Respondent submitted that the Petitioners have not demonstrated any exceptional circumstances to justify bypassing the statutory dispute resolution mechanisms provided under the law. It was contended that they were required to first pursue the available administrative and appellate processes before approaching the Court.
141. In response to allegations that involvement of the 3rd Respondent in a human resource audit deprived the Petitioners of an appeal mechanism, the 4th Respondent submitted that the 3rd Respondent merely conducted a staff audit and issued an independent report and did not participate in the revocation of appointments. That the revocation was solely undertaken by the 1st Respondent under Section 75 of the County Governments Act.
142. The 4th Respondent averred that the Petitioners failed to prove any exceptional circumstances that would justify bypassing statutory remedies, and further failed to demonstrate that the 3rd Respondent was involved in or

capable of determining any appeal related to the revocations.

143. It was also submitted that the Court lacks jurisdiction due to failure by the Petitioners to exhaust internal dispute resolution mechanisms and the doctrine of constitutional avoidance, as the matter ought first to have been addressed through the relevant statutory bodies.
144. The 4th Respondent further submitted that there is no precise pleading as the Petition filed does not meet the threshold of a constitutional petition as it does not disclose or describe the nature the complaints of violation of their constitutional rights or threats to such violations with specificity.
145. While relying on the case of **Anarita Karimi Njeru v Republic [1979] eKLR** and **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR**, the 4th Respondent submitted that the Petition only cites alleged violations of omnibus provisions of the Constitution and that the mere citing of these Articles without specifically pleading the particulars of such violation or threat does not make it a constitutional issue.

146. Additionally, the 4th Respondent submitted that the burden of proving a valid employment relationship rests with the Petitioners and that they have failed to discharge this burden.
147. It is contended that the appointment letters relied upon were issued in violation of Sections 65 and 66 of the County Governments Act, which require competitive recruitment processes in line with constitutional principles of transparency, equality and fair competition.
148. The 4th Respondent submitted that failure to comply with statutory recruitment procedures renders any resulting employment contracts null and void ab initio and unenforceable and that as such, the Court cannot enforce such illegality or apply the Employment Act to validate them. Reliance was placed on authorities including ***Wambui v Mwangi & Others (2021) eKLR*** and ***Mutisya v Theuri & Another (2023) eKLR***, to support the position that contracts formed in violation of statute are void and unenforceable.

149. In the end, the 4th Respondent urged the court to dismiss the Petition with costs for failure to meet procedural and substantive legal thresholds.

Determination

150. Having carefully considered the Petition, the responses by the Respondents, the affidavits on record, the written submissions as highlighted by parties in court, the issues that arise for determination are:-

- i. Whether a lawful employer-employee relationship existed between the Petitioners and the 1st Respondent.
- ii. Whether the Petition is premature for failure to exhaust statutory remedies
- iii. Whether the 1st Respondent was properly constituted and had the legal capacity to revoke the Petitioners' appointments.
- iv. Whether the Respondents complied with the Constitution and applicable law, particularly Article 47 of the Constitution and section 4 of the Fair Administrative Action Act in revoking the Petitioners' employment.

- v. Whether the involvement of the 3rd Respondent in the audit report that flagged the alleged irregularities was lawful
- vi. What reliefs should issue

Whether there was a lawful employer-employee relationship between the Petitioners and the 1st Respondent

- 151. The Respondents have challenged the existence of a lawful employment relationship on the basis that the Petitioners' recruitment and subsequent appointments were not anchored on a lawful recruitment process compliant with Sections 65 and 66 of the County Governments Act, and therefore were void ab initio.
- 152. The Petitioners have however contended that they were issued with appointment letters, served for extended periods, were continuously remunerated and were treated as employees of the 1st Respondent.
- 153. From the evidence on record, it is common ground that the Petitioners were in actual service and were placed on the Integrated Payroll and Personnel Database (IPPD) of the 1st Respondent and that they received salaries for the period

they worked. Further, it has not been denied that the Petitioners rendered services to the County Government.

154. Section 2 of the Employment Act defines “contract of service” to *mean an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;*

“employee” to mean *a person employed for wages or a salary and includes an apprentice and indentured learner;*
and,

“employer” to mean *any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;*

155. In the instant case the petitioners had appointment letters whose revocation is the subject matter of the suits before this court. The existence of appointment letters, copies of which have been produced before the court, coupled with

performance of service and payment of salaries, is prima facie evidence of an employment relationship, even where procedural irregularities are alleged. Had there been no employment relationship, there would have been no need for the 1st Respondent to revoke the employment contracts.

156. The existence of an employment relationship is a question of fact to be determined from the conduct of the parties. The law recognizes that employment relationships may arise from conduct or documentation. The Employment Act at section 8 recognizes that employment relationships can be implied by the conduct of parties.
157. Accordingly, I find that an employer–employee relationship did exist between the Petitioners and the 1st Respondent.

Whether the Petition is premature for failure to exhaust statutory remedies

158. The Respondents argued that the Petitioners failed to exhaust internal review mechanisms and the appellate process by failing to apply for review as directed in the revocation of employment letters and to appeal to the 3rd

Respondent under section 77 of the County Governments Act.

159. As rightly submitted by the 1st, 2nd and 4th Respondents, it is trite that where there is an internal dispute resolution mechanism provided in the Constitution, statute or agreement applicable to the parties, an aggrieved party is duty bound to exhaust such process before seeking Court's intervention.

160. The Black's Law Dictionary 10th Edition, defines the doctrine of exhaustion as follows:

"Exhaustion of remedies: The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary."

161. In ***Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)*** the Court of Appeal held: -

In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any

particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions.”

162. However, courts have also recognized that the doctrine of exhaustion is not absolute. The court in ***Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR)*** held:

“59. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In R vs Independent Electoral and Boundaries Commission (IEBC) & Others ex parte The National Super Alliance Kenya (NASA) (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus: What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests

involved - including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.)

59. *As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case*

and determine whether it is suitable to determine the issues raised.

60. *The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR.*

61. *In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental*

rights or freedoms is a question which can only be determined by the High Court."

163. The Petitioners in the instant case challenge the legality and constitutionality of the entire process, including the involvement of the Public Service Commission, who is the 3rd Respondent herein, in the process that is alleged to have led to the revocation of their employment contracts.
164. The 3rd Respondent, which is the body mandated by statute to hear appeals against decisions of the 1st Respondent, has been accused of having been the author of the decision to terminate the employment contracts of the Petitioners. It has in its responses and submissions, not denied having carried out the human resource audit that is cited as the basis for the revocation of the contracts of the Petitioners. It is accused of doing so without legal mandate.
165. It is my view that the concerns raised by the Petitioners are valid and legitimate with regard to the impartiality and effectiveness of the internal review mechanisms if directed to the 3rd Respondent. The Petitioners do not trust the 3rd Respondent to be capable of offering an effective or impartial remedy in such circumstances.

166. On the internal review mechanism that the petitioners were referred to in the letter of revocation of their contracts, the Respondents have not indicated the legality or contractual basis thereof. Without such legitimacy, the same cannot be invoked as a basis for the exhaustion principle.
167. Further, one of the petitions herein is filed by the trade union that represents the Petitioners and which is not bound by the provisions of section 77 of the County Governments Act.
168. It is therefore my finding that the Petition falls within the exceptions to the doctrine of exhaustion and is properly before this Court.

Whether the 1st Respondent was properly constituted and had the legal capacity to revoke the Petitioners' appointments.

169. The Petitioners allege that the 1st Respondent was not properly constituted at the time of revoking the contracts of the Petitioners and that the action was a nullity. The Petitioners averred that the 1st Respondent was at the time comprised of an acting chairperson and acting secretary and therefore lacked legal capacity to make binding decisions.

170. On its part, the 1st Respondent maintained that the Board was properly constituted with the requisite members, including acting officials validly appointed under the law.

171. Section 58 of the County Governments Act provides for the composition of the Public Service Board as follows:

58. Composition of the County Public Service Board

(1) The County Public Service Board shall comprise—

(a) a chairperson appointed in accordance with section 58A;

(b) at least three but not more than five members appointed in accordance with section 58A;

(c) a certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.

172. Further sections 43 and 45 of the Interpretation and General Provisions Act provide that:

Powers and duties of holder of office.

43. Where a written law confers a power or imposes a duty on the holder of an office as such, then, unless a contrary

intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding that office.

Reference to holder of office includes person discharging functions of that office.

45. In this Act and in any other written law, instrument, warrant or process of any kind, a reference to a person holding an office shall include a reference to any person for the time being lawfully discharging the functions of that office.

173. Section 2 of the County Governments Act also provides under interpretations that "*appointment*" includes an acting appointment, reappointment, promotion and re-designation.
174. My understanding of section 58 is that the Board is properly and lawfully constituted by a chairperson, at least 3 members and a secretary. At the time material to this suit that was the composition of the Board. The averment that the Board's term had lapsed is not supported by any evidence.

175. Further, the averment of the Petitioners that the acting chairperson and acting secretary had no mandate to hold those positions is not supported by any valid reasoning or legal instrument. In the instant case the acting chairperson was in fact the vice chairperson whose mandate is to deputize the chairperson and perform the functions of the office in the absence of the chairperson. Section 58(6) provides:

(6) The board shall elect a vice-chairperson from amongst its members.

176. It is evident from section 58(6) that there is provision in the Act for the position of vice-chairperson. The vice chairperson was therefore lawfully in office and lawfully exercising the powers of the office.

177. As for the secretary, section 58 provides that the holder of the position is to be appointed by the governor. The averment of the Petitioners that the acting secretary is a member of the executive and would undermine independence of the Board therefore is not valid.

178. The Petitioners have thus not placed before the Court evidence to demonstrate that the Board lacked quorum or that its members were unlawfully in office.

179. Consequently, the Court finds that the Board was properly constituted at the time of making the impugned decisions.

Whether the involvement of the 3rd Respondent in the audit report that flagged the alleged irregularities was lawful

180. The Petitioners assert that the 3rd Respondent unlawfully interfered with their employment, arguing that their employment contracts were revoked as a result of the audit it conducted.

181. The evidence on record shows that the audit in question was undertaken at the request of, and with the participation of the County Government of Nandi.

182. Article 234 of the Constitution provides that the Public Service Commission is mandated, inter alia, to investigate, monitor and evaluate the organization, administration and personnel practices of the public service.

183. Article 189 provides for cooperation between the national government and county governments as follows:

189. Cooperation between national and county governments

(1) Government at either level shall—

(a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;

(b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and

(c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

(2) Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

184. Section 59(4)(h) provides that *“(4) In the performance of its functions under subsection (1)(e), the County Public Service Board shall have powers to cooperate with other institutions working in the field of good governance in the public service;*
185. It was contended by the 1st and 2nd Respondents that the County Secretary wrote to the 3rd Respondent requesting a staff and payroll audit as part of actualizing the directive of the Third National Wage Bill Conference to reduce the wage bill to 35% of revenue in line with the provisions of the Public Finance Management (PFM) Regulations 2012 by the year 2028.
186. From the foregoing, it follows that the Public Service Commission is constitutionally empowered to undertake human resource assessments and audits within public institutions in order to ensure compliance with applicable laws, policies and standards and in the instant case, carried out the audit upon invitation by and with participation of the 1st and 2nd Respondents.
187. There is no evidence that the 3rd Respondent acted unilaterally or exceeded its constitutional mandate in conducting the audit.

188. From the material before the Court, the 3rd Respondent had authority and legal mandate to carry out the human resource audit of the 1st and 2nd Respondents.
189. It is further submitted that the role of the 3rd Respondent was limited to making findings and recommendations based on the audit exercise. The court has had the opportunity to peruse the report prepared by the 3rd Respondent and has confirmed that that the 3rd Respondent only made findings and gave recommendations to the 1st Respondent. the report does not directly recommend the revocation of the employment contracts of the Petitioners. It recommended appropriate action be taken by the 1st Respondent.
190. The Respondents have all denied that the 2nd and 3rd Respondents directed or mandated the revocation of the employment contracts of the Petitioners. No evidence was adduced to controvert this position.
191. I therefore find the involvement of the 3rd Respondent was lawful and within its constitutional and statutory mandate.

Whether the Respondents complied with the Constitution and applicable law, particularly Article 47 of the Constitution

and the Fair Administrative Action Act in revoking the Petitioners' employment.

192. Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act require that administrative action be lawful, reasonable and procedurally fair and that where a decision of an administrative body is likely to negatively affect any person such person ought to be given notice and an opportunity to respond. Section 4 of the Fair Administrative Action Act provides:

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to (a) attend proceedings, in person or in the company of an expert of his choice; (b) be heard; (c) cross-examine persons who give adverse evidence against him; and (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

193. The Petitioners allege that they were not heard prior to revocation of their employment contracts. The 1st and 2nd Respondents on their part have argued that the revocation of the appointments of the Petitioners was undertaken on the

basis of findings of irregularities in order to safeguard public funds.

194. From the record, it is evident that the Petitioners were not accorded an opportunity to be heard prior to the revocation of their appointment letters.

195. The right to be heard is a fundamental principle of natural justice that cannot be dispensed with, regardless of the circumstances, including for purposes of safeguarding public funds.

196. Even in cases of alleged illegality, public bodies are bound to act in accordance with the Constitution and principles of natural justice. A public body cannot resort to arbitrary or unilateral administrative action on account of expediency.

197. Further, Article 236 of the Constitution provides that:

A public officer shall not be—

(a) victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or

(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

198. In addition, section 41 of the Employment Act provides that

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

199. I therefore find that the Respondents violated the Petitioners' right to fair administrative action under Article 47 of the Constitution and section 4 of the Fair Administrative Action

Act as read together with section 41 of the Employment Act.
The terminations were therefore unfair.

Remedies

200. Before addressing remedies, it is imperative to mention here that by a consent dated 11th January 2025, the parties agreed that any final orders of the Court would apply only to 426 Petitioners listed in **Annexure PP-1**.
201. Further, that on 22nd January 2026 when judgment was initially scheduled for delivery, the Court was informed that certain Petitioners had undergone further administrative processes, including interviews and possible reinstatement.
202. The Court, in exercise of its case management powers, directed the 1st and 2nd Respondents to provide a status update on the administrative action taken and to identify Petitioners who had been reinstated or whose service had been regularized, so that they are excluded from the judgment.
203. On 9th February 2026, the Court was informed that 80 Petitioners had been reinstated and/or re-engaged into service.

204. Consequently, this judgment applies only to the remaining Petitioners in **Annexure PP-2**, and expressly excludes the 80 Petitioners reinstated during the pendency of these proceedings.
205. It is further imperative to add here that I have carefully read the Human Resource Audit Report dated 1st August, 2024 prepared by the Public Service Commission, the 3rd Respondent herein. The report disclosed a number of malpractices in the hiring of staff which this court has no reason to disagree with. Of significance to this case is that there were officers appointed to permanent and pensionable service without probationary terms; several officers were elevated to higher grades at different points without promotional appointments by the 1st Respondent; some officers were downgraded without minutes of the 1st Respondent to support the downgrading; there were fluctuations in the number of staff in the IPPD system that could not be explained; some employees were paid special salaries outside the pay bands against those authorized by SRC and with no policy guidelines for special salaries; several employees were introduced in the IPPD system without

authority of the 1st Respondent; there was retention of exited officers in the payroll; there were restoration of personal numbers for staff who had exited service; and finally, there was translation of terms of service from contract to permanent and pensionable without approval of the 1st Respondent while there were others on contract terms whose particulars in IPPD reflected that they were on permanent and pensionable terms.

206. All these irregularities required streamlining. The report recommended action for each irregularity noted. It is imperative to point out that as already observed, the report does not expressly recommend termination of any appointment but rather that a decision be made by the 1st Respondent on the continuity of service of officers irregularly in the IPPD system.

207. With the foregoing in mind, I will now consider the remedies sought by the parties. I will go by the remedies sought in Petition E012 of 2024 as the prayers subsume those in Petition E016 of 2024.

208. In Petition E012 of 2024 the Petitioners prayed for:

a. A Declaration that the Respondents have violated the Articles 1, 2, 3, 6, 10, 19, 20, 21, 22, 23, 27, 28, 40, 47, 73, 174, 175, 176, 232, 235, 258(1) and 259(1) of the Constitution of Kenya, 2010.

From the findings in the judgment, the only article in this prayer violated by the 2nd Respondent is Article 47. I declare accordingly declare that the 1st Respondent violated Article 47 of the Constitution.

b. A Declaration that the 2nd Respondent is an accessory in breach of Articles 1, 2,3,6 ,10,19, 20, 21, 22, 23, 27, 28, 40, 47, 73, 174, 175. 176, 232, 235, 258(1) and 259(l) of the Constitution by unlawfully arrogating himself the exclusive functions of the Nandi County Public Service Board contrary to Article 235 the Constitution of Kenya, 2010.

No evidence was adduced to support the averment that the 2nd Respondent was an accessory in the breach of the articles of the Constitution cited. This prayer was not thus not proved and is declined.

c. A Declaration that the 2nd and 3rd Respondents are illegal aliens and have no role in decisions concerning staffing of

County Governments and thus their decisions, audits, advisories or any form of agreement between the Public Service Commission and the Nandi County Executive is an unlawful interference of the 1st Respondent's constitutional mandate and therefore nullity ab initio.

In the judgment the court did not find any evidence that the 2nd and 3rd Respondents interfered with the 1st Respondents constitutional mandate. And the two bodies are certainly not aliens. The prayer is thus declined.

d. A Declaration that the 4th Respondent is in breach of his constitutional and statutory obligation to advise the 1st and 2nd Respondent on the correct legal position on these obvious points of law.

No evidence was presented before the court to prove that the 4th Respondent was under an obligation to advise the 2nd Respondent and failed to do so. Specifically there was no evidence that the 2nd Respondent sought advise from the 4th Respondent which the 4th Respondent failed to give.

e. An order of Certiorari be issued to bring into this Court and quash the purported revocation letters issued by the 1st

Respondent to the Petitioners as void and of no legal effect.

Termination of employment takes effect on the date of the letter of termination. Quashing of a termination letter would imply reinstating the employee back to employment. Under section 49 of the Employment Act, once termination has taken effect, reinstatement is only considered after taking into account the factors set out under section 49(4) of the Act. Section 49(4)(c) and (d) provide that the court must consider the practicability of recommending reinstatement or re-engagement and the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances. In the present case no special circumstances have been raised by the Petitioners. I thus find that an order for certiorari is not appropriate and therefore cannot issue in the present case.

f. An order of Certiorari be issued to bring into this Court and quash the purported outcome of the comprehensive audit conducted by the 3rd Respondent as an illegality.

As the court found, the audit was lawful and therefore the prayer is not justified.

g. This Court be pleased and do hereby grant an order of permanent Injunction, restraining the 1st Respondent, its representatives, employees, servants and/or agents or anybody working for it from purporting to revoke the appointments of the Petitioners on account of the audit report made by the 3rd Respondent.

This prayer is overtaken by events, the revocation of appointments of the Petitioners having already taken effect. The prayer is accordingly declined.

Having declined the prayers sought, what orders are available to the Petitioners?

209. This court is empowered under section 49 of the Employment Act, to grant remedies as provided under the section where there is a finding of unfair termination of employment.

210. Having found that the orders of certiorari are not available to the Petitioners and having considered all the relevant factors under section 49(4) of the Act, the court awards that the Petitioners be paid as follows:

- a. For each Petitioner, one (1) months' salary in lieu of notice,
- b. For all the Petitioners who were serving on contracts:
 - i. one-year contract: compensation equivalent to two months' salary in lieu of notice,
 - ii. two-years' or longer contracts, compensation equivalent to 4 months' salary in lieu of notice.
- c. Compensation for employees who were serving on permanent and pensionable terms of service:
 - i. For those who had served for up to 3 years' service: 3 months' salary
 - ii. For those who had served for more than 3 years but less than 5 years: 4 months' salary
 - iii. For those with more than 5 years' service: 6 months' salary.

211. The 1st Respondent shall pay costs of the Petitioners.

212. Interest shall accrue at court rates from date of judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 23RD DAY OF APRIL, 2026**

MAUREEN ONYANGO

JUDGE