



**Matheka v County Government of Makueni & another (Constitutional
Petition E016 of 2025) [2026] KEELRC 1251 (KLR) (8 May 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1251 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CONSTITUTIONAL PETITION E016 OF 2025**

JW KELI, J

MAY 8, 2026

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS
AND ARTICLE 2, 3, 22, 23, 27, 41 AND 48 OF THE CONSTITUTION OF KENYA, 2010.**

AND

**IN THE MATTER OF CONTRAVENTION AND VIOLATION OF ARTICLE,
2, 3, 22, 23, 27, 41 AND 48 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF DISCRIMINATION AGAINST DR. CYRUS WAMBUA MATHEKA

BETWEEN

DR. CYRUS WAMBUA MATHEKA PETITIONER

AND

COUNTY GOVERNMENT OF MAKUENI 1ST RESPONDENT

MAKUENI COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

JUDGMENT

1. The Petitioner commenced this suit vide a Petition dated 12th September 2025 seeking the following orders:-
 - a. A Declaration that the acts of the Respondents are discriminatory against the Petitioner on account of non-existent requirement for the promotion/appointment of the Petitioner to Job Group Q and in violation of *the Constitution* of Kenya, 2010.



- b. A Declaration that the acts of the Respondents amount unfair labour practices, contrary to *the Constitution* of Kenya, 2010.
 - c. An Order for the award of General damages to the Petitioner for discrimination on account of non-existent requirement for the promotion of the Petitioner to Job Group Q and subjecting the Petitioner to servitude and mental torture.
 - d. An Order against the Respondents in favour of the Petitioner for the payment of salary arrears of the Job Group P and Q at the sum of Kshs.2,032,118/= as per paragraph 30 above.
 - e. An Order against the Respondents in favour of the Petitioner for the payment of salary arrears of the Job Group Q at the sum of Kshs.66,002/= per month until proper re-adjustment of the Petitioner's salary to the rightful Job Group Q.
 - f. An Order against the Respondents in favour of the Petitioner directing the Respondents to promote the Petitioner to the rightful Job Group Q from the time of posting as a consultant.
 - g. Interest of the sum in Prayers (4) and (5) above until payment in full at court's rates.
 - h. Costs of the Petition.
 - i. Any other award the Honourable Court deems fit in the circumstances.
2. The Petition was filed alongside the Supporting Affidavit of the Petitioner sworn on 12th September 2025, and list and bundle of annexures of even date.
 3. In response to the Petition the 1st Respondent filed a Notice of Preliminary Objection dated 28th October 2025; and Grounds of Opposition dated 6th November 2025, which culminated in withdrawal of the suit as against the 1st Respondent vide a Notice of Withdrawal dated 15th January 2026.
 4. The 2nd Respondent responded to the Petition through a Replying Affidavit sworn by CS Redempta Kavindu on 5th November 2025.
 5. To counter the 2nd Respondent's response, the Petitioner filed a Supplementary Affidavit sworn on 20th February 2026.

The Petitioner's case in summary

6. The Petitioner, medical doctor by profession, states that he was employed by the Respondents on 1st July 2015 as a medical officer under Job Group M, and was confirmed into permanent and pensionable status on 4th April 2019. On 15th November 2019, the Petitioner was promoted to Job Group N by the 2nd Respondent.
7. The Petitioner's case is that he served the Respondents in the position of Medical Officer for five years, after which he enrolled for a Master's Degree. The 1st Respondent approved his study leave, and he pursued a Master's Degree in Clinical Pathology. Upon completion of his further studies, the Petitioner resumed work at the 1st Respondent's headquarters and was deployed and posted as a medical specialist, Consultant Clinical Pathologist, to work at Makueni County Referral Hospital. Following his deployment, the Petitioner immediately reported to his work station and embarked on providing specialist services as a Consultant Clinical Pathologist, a position which he holds to date.
8. The Petitioner's grievance is that he was due for a further promotion to Job Group P on 14th November 2022 per the Scheme of Service for Medical Officers, Dental Officers and Pharmacist, 2016,



but he has never been promoted. He states that an officer should be promoted having served for 3 years in this common cadre. The Respondent does not exhibit any evidence/ action to effect this within a reasonable time (either in Dec 2022 or the whole of 2023). The earliest evidence of such promotional advertisements was on 2nd May 2024. That further, the promotions for common cadre are automatic placing an obligation upon the employer to promote the employee, every three years thereof, which the Respondent failed to do.

9. It is averred that on 2nd May 2024, the 2nd Respondent advertised for various external and internal promotional job vacancies for its specialist doctors, after consultation and lobbying by medical doctors working for the Respondents who were due for promotion, including the Petitioner. The 2nd Respondent shortlisted some officers and left out others including the Petitioner on the basis that they did not qualify for shortlisting for lack of specialist licenses or other reasons.
10. The Petitioner complains that the advertisement for promotional job vacancies did not list a specialist license as a requirement to earn the promotion for the positions of Senior assistant director of medical services/ medical specialist 1, job group “Q”. The requirements for this position, according to the Petitioner, were anchored in the Scheme of Service, as well as in the advertisement. The advertisement specified:

“....For appointment to this grade, an officer must have:

 - a. Bachelor of Medicine and Bachelor of Surgery (M.B.Ch.B) degree from an institution recognized by medical Practitioners and Dentist Board.
 - b. Master’s degree in any of the following fields: Medicine, Anesthesia, Cardiothoracic surgery, dermatology, Ear, Nose and throat, Otorhinolaryngology, family medicine, general surgery, geriatrics, Internal Child Health, Palliative Medicine, Pathology, Plastic and Reconstructive surgery, Psychiatry, Public health, Radiology, Health systems management, public health microbiology and Emerging Infectious Diseases, Biostatics or equivalent qualification from an institution recognized by the Medical Practitioner’s and Dentists Board.
 - c. At least twelve (12) years’ experience, three (3) of which must have been at a management level in public or private sector.
 - d. Certificate of registration by the Medical Practitioners and Dentist Board.
 - e. Valid practicing License from Medical Practitioner’s and Dentist Board.
 - f. Certificate in Strategic Leadership and Development Programme Lasting not less than six (6) weeks from a recognized Institution.
 - g. Certificate in Computer application skills from a recognized Institution....”
11. Partial promotions were effected for the shortlisted doctors, while the doctors who were left out due to lack of a specialist license or other reasons had a series of consultations with the 2nd Respondent, who agreed to re-advertise and waived some of the requirements of the initial advertisement, namely reduced the number of years of experience from 12 to 6 years, did away with requirement of the computer certificate and also varied the requirement of a Senior Leadership Development Program (SLDP) Certificate to include enrolment even without evidence of completion.



12. With a view to promoting the consultants, the 1st respondent enrolled the doctors for the SLDP course at Kenya School of Government, except the petitioner who had already paid out of pocket, enrolled and completed the course as listed in the scheme of service.
13. It is stated that in the meantime, the Petitioner together with the other affected doctors filed an appeal to the Public Service Commission on 17th September 2024, namely Dr. Gavin Orangi & 18 Others - versus- Makueni county Public Service Board, which was heard and determined vide a Decision dated 11th June 2025, dismissing the Appeal.
14. During the proceedings before the Public Service commission, the 2nd Respondent, on 12th November 2024, re-advertised for similar positions, and the Petitioner applied for two positions being:-
 - a. Senior Assistant Director Of Medical Services/ Medical Specialist I Job Group “Q”; and
 - b. Assistant Director Of Medical Services/ Medical Specialist I Job Group “p”
15. The Petitioner states that the requirements for the Senior Assistant Director of Medical Services/ Medical Specialist I Job GROUP “Q” positions were as follows:

“....For appointment to this grade, an officer must have:

 - a. Bachelor of Medicine and Bachelor of Surgery (M.B.Ch.B) degree from an institution recognized by medical Practitioners and Dentist Board.
 - b. Master’s degree in an of the following fields: Medicine, Anesthesia, Cardiothoracic surgery, dermatology, Ear, Nose and throat, Otorhinolaryngology, family medicine, general surgery, geriatrics, Internal Child Health, Palliative Medicine, Pathology, Plastic and Reconstructive surgery, Psychiatry, Public health, Radiology, Health systems management, public health microbiology and Emerging Infectious Diseases, Biostatics or equivalent qualification from an institution recognized by the Medical Practitioner’s and Dentists Board.
 - c. At least six (6) years’ experience.
 - d. Certificate of registration by the Medical Practitioners and Dentist Board.
 - e. Valid practicing License from Medical Practitioner’s and Dentist Board.
 - f. Certificate in Strategic Leadership and Development Programme Lasting not less than six (6) weeks from a recognized Institution.
 - g. Certificate in Computer application skills from a recognized Institution....”
16. This time, the Petitioner was shortlisted for both positions and attended an interview on 3rd March 2025, and he believes he attained the required pass marks for the promotion, for the both positions. However, he was not promoted while other applicants who qualified in accordance to the advertisement and the scheme of service were all promoted. The Petitioner states that he did not receive any reason for the failure to promote him until he wrote a letter to the 2nd Respondent enquiring on his promotion. The 2nd Respondent responded vide a letter dated 9th July 2025, which was six (6) months after the interview, while the other qualified officers had been promoted immediately after the interviews.



17. It is the Petitioner's case that the acts and omissions of the Respondents amounted to blatant discrimination against the Petitioner in the work place in that the Respondents considered a non-existent qualification, that is, a specialist licence, to disqualify the Petitioner which was clearly indicated in the Respondents' letter dated 9th July 2025; the requirement for a specialist license was not in the advertisement of 12th November 2024; the requirement for a specialist license does not exist in the Scheme of Service for Civil Servants, for 2016; the Respondents only unlawfully used the said non-existent qualification to specifically target, discriminate and not promote the Petitioner; the Respondents in a blatant move of sheer discrimination promoted other officers who did not have a Specialist License in the same or previous interviews. The other officers who were promoted without having Specialist Licenses are as follows:
- i. On 3rd March 2025, Both Dr. Mwatha Stephen (an officer short-listed by the second respondent) and the petitioner participated in the same interviews, by the same board, on the same date, at the same venue, to be considered for promotion for the position of Senior Assistant director of Medical Services/Medical Specialist I, Job Group Q. Dr Mwatha and the petitioner had all the requirements as set in out in the advertisement, but no specialist licence. Dr. Mwatha Stephen was promoted while the petitioner was awarded a regret letter. The same interview, same panel and same marking scheme produced different outcomes.
 - ii. Dr. Benard Kasanga was promoted (on various dates during the tenure of the second respondent) to Job Group Q and to R, while he does not possess a specialist license.
 - iii. Dr. Eric Chomba was promoted (on various dates during the tenure of the second respondent) to Job Group Q while he does not have a specialist license.
 - iv. Dr. Johnstone Muthoka was employed by the Respondents at job group Q while he did not possess the specialist license.
 - v. The Respondents promoted all the consultants who had lodged the appeal before the Public Service Commission, who were shortlisted and interviewed except the petitioner, who was shortlisted for two positions, did two interviews, passed both and not promoted without any reasonable grounds.
18. The Petitioner points out that a search on the KMPDC website demonstrate that the officers named by him as having been promoted did not possess a specialist license as of the date of filling this petition, just like the Petitioner. He states that the Respondents have blatantly discriminated against him for voicing his concerns before the Public Service Commission and leading the aggrieved consultants in the PSC petition against the second respondent.
19. The Petitioner is aggrieved as he is the only employee of the Respondents who was serving as a Consultant at the times of the interviews who is still serving as senior medical officer. He states that he performs the duties of a Consultant while been denied the benefits of a Consultant which include the job group as well as salary and all benefits that come with being Consultant.
20. It is the Petitioner's case that in accordance with the scheme of service, he ought to have been promoted to JOB GROUP P in November 2022, and he ought to have started enjoying the benefits thereof from December 2022. The Petitioner should have been promoted to Job Group "Q", on 9th February 2024, immediately he attained his Master's Degree Qualification and upon being posted as a Consultant Clinical Pathologist to Makueni County Referral Hospital. Due to the failure to promote him, the Petitioner states that he has lost his salary as follows:



TABLE A: Job group P arrears	Pay at P	Pay at N	Difference/Loss/ Arrears
Dec-22	343,296.00	291,424.00	51,872.00
Jan-23	343,296.00	291,424.00	51,872.00
Feb-23	343,296.00	291,424.00	51,872.00
Mar-23	343,296.00	291,424.00	51,872.00
Apr-23	343,296.00	291,424.00	51,872.00
May-23	343,296.00	291,424.00	51,872.00
Jun-23	343,296.00	291,424.00	51,872.00
Jul-23	343,296.00	291,424.00	51,872.00
Aug-23	343,296.00	291,424.00	51,872.00
Sep-23	343,296.00	291,424.00	51,872.00
Oct-23	343,296.00	291,424.00	51,872.00
Nov-23	343,296.00	291,424.00	51,872.00
Dec-23	343,296.00	291,424.00	51,872.00
Jan-24	343,296.00	291,424.00	51,872.00
Feb-24	343,296.00	291,424.00	51,872.00
Job group Q			
Mar-24	357,426.00	291,424.00	66,002.00
Apr-24	357,426.00	291,424.00	66,002.00
May-24	357,426.00	291,424.00	66,002.00
Jun-24	357,426.00	291,424.00	66,002.00
Jul-24	357,426.00	291,424.00	66,002.00
Aug-24	357,426.00	291,424.00	66,002.00
Sep-24	357,426.00	291,424.00	66,002.00



Oct-24	357,426.00	291,424.00	66,002.00
Nov-24	357,426.00	291,424.00	66,002.00
Dec-24	357,426.00	291,424.00	66,002.00
Jan-25	357,426.00	291,424.00	66,002.00
Feb-25	357,426.00	291,424.00	66,002.00
Mar-25	357,426.00	291,424.00	66,002.00
Apr-25	357,426.00	291,424.00	66,002.00
May-25	357,426.00	291,424.00	66,002.00
Jun-25	357,426.00	291,424.00	66,002.00
July-25	357,426.00	291,424.00	66,002.00
Aug-25	357,426.00	291,424.00	66,002.00
Sept-25	357,426.00	291,424.00	66,002.00

21. The Petitioner avers that by their actions the 2nd Respondent has violated Article 27 of *the Constitution* of Kenya, 2010 which provides for equality before the law and equal protection and equal benefit of the law; Article on the right to fair labour practices and the rights of workers including the right to reasonable working conditions; Article 47 which provides that every person has a right to an administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and Article 48 which guarantees every one access to justice.
22. The Petitioner seeks payment of the total arrears of the salary he should have earned at the time the Respondents failed to promote him, that is, KSHS.2,032,118 per his tabulation, as well as general damages for discrimination against the Petitioner on a non-existent qualification.

Respondent's case in brief.

23. The 2nd Respondent admits that the Petitioner is their employee recruited by the 2nd Respondent as a Medical Officer, Job Group "M" through a letter dated 1st July, 2015 following a successful completion of his Internship Programme with the Respondents' Department of Health Services. The Petitioner was confirmed and admitted into the Respondents' permanent and pensionable establishment through a letter dated 4th April, 2019

The Petitioner currently holds the position of Senior Medical Officer, Job Group "N", having been promoted with effect from 5th November 2019.
24. While the 2nd Respondent agrees that the Petitioner was due for promotion to the grade of Assistant Director of Medical Services/Medical Specialist II Job Group "P" on 15th November 2022, they state that they published two (2) advertisements for internal and external competitive filling of several



vacancies, including in the position of Assistant Director of Medical Services/Medical Specialist II Job Group "P", and the Petitioner applied.

25. The 2nd Respondent on request by the Department of Health Services under which the Petitioner serves, declared in the Standard Newspaper and on their website on 2nd May, 2024 various positions including 15 vacancies in the grade of Assistant Director for Medical Services/Medical Specialist II for filling through a competitive process in the County Public Service. The same advert was widely circulated via social media and to the Department with clear instruction to bring it to the attention of serving officers which advert closed on 16th May 2024 at 5:00. Contrary to his allegations, the Petitioner did not submit his application for consideration for the vacancy under this advertisement.
26. Rather, the Petitioner submitted his application for a vacancy in the grade of Senior Assistant Director of Medical Services/Medical Specialist I under the specialization Pathologist, Job Group "Q" where while he was the only applicant for the Pathologist Specialization, at the shortlisting level, the 2nd Respondent could not shortlist him because he was yet to be recognized as a medical specialist by issuance of a specialization license by the professional body. The 2nd Respondent cannot recognize the Petitioner as a Medical Specialist - Pathologist when it is well within his knowledge that he is and shall be a Registrar for a period of 2 years following his graduation before he is recognized as a Medical Specialist - Pathologist by the profession regulator. Perusal of his personal file confirms that he Graduated in December 2024 and can only be recognized as Medical Specialist - Pathologist from December, 2026; when he will be eligible to apply for such Medical Specialist position. Once the Petitioner complies with the Career Progression Guidelines requirements on recognition as a Medical Specialist – Pathologist, he shall be appointed as such subject to declaration of vacancies by the Department of Health Services.
27. The Respondent acknowledges that the Petitioner and other officers who also did not qualify for shortlisting due to lack of specialization recognition filed a petition with the Public Service Commission stopping the interview Process. Further, on false and misleading information to the County Executive, they caused an Executive order to be issued that the scheduled interviews be stopped forthwith. On the strength of the County Executive Order, the Board called-off the scheduled interviews and the shortlisted candidates were advised accordingly. The application before the Public Service Commission was dismissed and the Commission upheld the decision of the 2nd Respondent of not shortlisting officers who were yet to be recognized by the profession regulator as a Medical Specialist I through the issuance of such certificate.
28. The 2nd Respondent states that subsequently, on 12th November, 2024, following another request by the Department of Health Services it declared two (2) vacancies in the position of Assistant Director of Medical Services/Medical Specialist II Job Group 'P'. These vacancies, among other, were published on the 2nd Respondent's website, noticeboards and a copy of the same circulated to the Department to bring to the attention of qualified serving officers. Nine (9) applications were received for the said vacancies, with six (6) of the applicants, including the Petitioner being shortlisted and invited for interview. Due to the same reasons that disqualified him for the earlier position, the Petitioner could not be appointed to the position.
29. Through the same advertisement, nine (9) vacancies in the grade of Senior Assistant Director of Medical Services/Medical Specialist I Job Group "Q" were also declared. 11 applications were received, with the 11 applicants including the Petitioner being shortlisted and invited for interview. In selecting candidates to fill the vacancies in the grade of Assistant Director for Medical Services/Medical Specialist II, the 2nd Respondent was guided by Section C.5.3 (1) and (2) of the



Human Resource Policies and Procedures Manual for the County Public Service which guide as follows on seniority in public service:

“The seniority of public officers in the County Public Service shall be determined as follows:

As between public officers of the same grade:

- (i) By reference to the dates on which they respectively entered the grade.
 - (ii) If the public officers entered that grade on the same day, by reference to their seniority on the day immediately preceding that day.
 - (iii) If any public officers who entered the same grade on the same day did so by appointment and not by promotion, then seniority relative to each other shall be determined by reference to their respective ages.
- (2) As between public officers of different grades on different salary scales, by reference to the maximum point on their salary scale, a flat rate of salary is regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate.”

30. In filling the nine (9) vacancies, the 2nd Respondent was therefore guided by merit and confirmation from the regulating body portal that one was already recognized as a Specialist, a condition that the Petitioner had not met at the time. Indeed, while the department required 9 officers for the grade of Senior Assistant Director for Medical Services/Medical Specialist I, only 8 candidates were appointed into the grade.
31. Further, based on the criteria given through the Human Resource Policies and Procedures Manual for the County Public Service, the Petitioner did not qualify for appointment into the grade because there were other serving officers who had joined the public service before him as per the procedure on Seniority of public officers. The Petitioner, through the Accounting Officer responsible for Health Services under the Department of Health Services, was advised why he was not appointed to the vacancy in the grade of Assistant Director of Medical Services/Medical Specialist II.
32. The Respondent avers that it has never been in dispute that the Petitioner holds a Master’s Degree in Clinical Pathology. However, the Petitioner having completed his Master’s Degree in December 2024, he is yet to be recognized as a specialist by issuance of a specialization license by the professional body after completing 2 years as a Registrar.
33. The Respondent denies claims by the Petitioner that partial promotions were done following the advertisement of May, 2024 for the shortlisted specialists, while some of doctors were left out due to other reasons is false. The true facts according to the Respondent are that the 2nd Respondent only shortlisted officers who had been recognized as Medical Specialists by the profession regulating body as was confirmed by the licenses attached to their applications and from the profession registration portal.
34. On the claims by the Petitioner that he did not receive any response indicating why he was not promoted, the 2nd Respondent states that it is their culture to communicate via SMS as well as letter to all officers who are not successful following any interviews conducted by them. The Respondent confirms that the Petitioner was contacted via SMS. The 2nd Respondent denies the allegations that they discriminated against the Petitioner by promoting other officers who did not have a specialist license and states that the Petitioner has not produced evidence of these allegations before the court. They insist that all the officers who were promoted had met the requirements and were registered as medical specialists by the profession regulating body.



35. The 2nd Respondent denies the averment that the Petitioner should have been promoted to the position of Assistant Director of Medical Services/Medical Specialist II in November, 2022 and started to enjoy the benefits thereof from December 2022. They state that when the department of Health Services declared 15 vacant positions for competitive filling by serving officers, the Petitioner never applied. Subsequently, based on the departmental needs and requirements, only 2 vacancies were declared to which the 2nd Respondent appointed serving officers as per the Human Resource Policies and Procedures Manual for the Public Service. They state that the procedure for promotions was rightly applied.
36. The 2nd Respondent categorizes the Petitioner's claim that he should have been promoted to the position of Medical Specialist I Job Group "Q" immediately he attained his Master degree as wishful thinking for the reason that one has to practice as a Registrar for a period of 2 years after attainment of Masters in order to be recognized as Specialists in their respective specialization and registered as such by the profession regulating body; and thereafter be appointed as a Medical Consultant. The Respondent states that the Petitioner will attain this qualification in December, 2026.
37. The Respondent challenges the present suit on the premise that the Petitioner failed to appeal to the Public Service Commission per Section 77(1) and (2) of County Government's Act 2012.
38. On the issue of salary arrears, the 2nd Respondent avers that promotion outside the common establishment is guided by availability of budget, departmental needs at the time and the availability of the vacancies in the departmental staff establishment. To this end, therefore, just as indicated herein above, the procedure on professional advancement in the public service is very clear and one must have met such requirements.
39. The Respondent denies that the Petitioner's rights have been violated as the 2nd Respondent only complied to the requirements on promotion and advancement of serving officers within the public service as per the Human Resource Policies and Procedures Manual for both the National Government by the Public Service Commission and that of the County Public Service.

Determination

40. Following directions by the court for the parties to file written submissions. Only the petitioner filed.

Issues for determination

41. In his submissions dated 13th February 2026, the Petitioner identified the following issues for determination:
 - i. Whether the Petitioner is entitled to a promotion to Job Group Q.
 - ii. Whether the Respondent's discriminated against the Petitioner by failing to promote him.
 - iii. Whether the Petition offends the doctrine of res judicata or amounts to re-litigation of matters already determined by the Public Service Commission.
 - iv. Whether the Petitioner is entitled to the salary arrears and continued monthly losses he seeks.
 - v. Whether the Petitioner is entitled to the general damages for discrimination, interests and costs.
42. The 2nd Respondent did not file submissions.
43. The court discerned the issues for determination in the petition to be -



- a. Whether the court had jurisdiction, the dispute having not been determined by the Public Service Commission
- b. If (a) is affirmative, whether the Respondent discriminated against the Petitioner by failing to promote him.
- c. What remedies are available for the petitioner

Whether the court had jurisdiction, the dispute having not been determined by the Public Service Commission.

44. It was not in dispute that the cause of action related to the lack of promotion of the petitioner. The historical position of the matter was summarised by the petitioner as above. The court confirmed the narration was consistent with the respondent's position. The petitioner submitted as follows: There was an appeal to the Public Service Commission lodged on 16th September 2024. The same arose from the decision of the Respondent not considering the Petitioner and others for promotions undertaken after the advertisement made on 2nd May 2024. During the proceedings at the Public Service Commission, the Respondents re-advertised the positions on 12th November 2024. The interviews for the same were done on 3rd March 2025. The Public Service Commission rendered its decision on 11th June 2025 and dismissed the appeal. The current Petition arises from the interviews conducted on 3rd March 2025, wherein the Petitioner states that the same was conducted in a way that was discriminatory against him. The issues arising from interviews of 3rd March 2025, have never been determined by the Public Service Commission. The Petitioner submits that his current petition deals with a different issue and different events from the appeal that was made to the Public service commission. It is thus not in dispute that the instant case relates to a different promotion which has not been determined by the Commission.
45. The said jurisdiction of the Commission flows from Article 234 of *the Constitution*, to wit – ‘234. Functions and powers of the Public Service Commission.
46. (1)The functions and powers of the Commission are as set out in this Article.(2)The Commission shall—(a)subject to this Constitution and legislation—(i)establish and abolish offices in the public service; and(ii)appoint persons to hold or act in those offices, and to confirm appointments;(b)exercise disciplinary control over and remove persons holding or acting in those offices;(c)promote the values and principles referred to in Articles 10 and 232 throughout the public service;(d)investigate, monitor and evaluate the organisation, administration and personnel practices of the public service;(e)ensure that the public service is efficient and effective;(f)develop human resources in the public service;(g)review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service;(h)evaluate and report to the President and Parliament on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the public service;(i)hear and determine appeals in respect of county governments’ public service; and(j)perform any other functions and exercise any other powers conferred by national legislation.”(emphasis given). Section 77 of the *County Governments Act* further states- ‘77. Appeals to the Public Service Commission (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against the decision.’ The petitioner relies on a violation of unfair labor practice which falls under Article 41 of *the Constitution*. The cause of action is clear that he was denied promotion based on a non-existent requirement. The court finds the cause of action before the court, though brought as a constitutional petition, is all about failure to be promoted



allegedly based on anon-existent requirement. There are no exceptional circumstances disclosed which would make the Commission unsuitable arbiter of the dispute. The Court of Appeal in Secretary, County Public Service Board & another v Abdille [2017] KECA 643 (KLR) where the Court of Appeal held – ‘There is no doubt that the respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by Section 77 of the Act. The section provides not only a forum through which the respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one, specifically tailored by the legislators to meet needs such as the respondent’s. In our view, the most suitable and appropriate recourse for the respondent was to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance. In terms of Republic v National Environment Management Authority (supra), we discern no exceptional circumstances in this appeal that would have warranted the bypassing of the statutory appellate process by the respondent. Her contention that she disregarded the appeal because it could not afford her an opportunity to question the procedure followed by the appellant is in our view, without basis because Section 77 has placed no fetter to the jurisdiction of the Public Service Commission.’ I do uphold the decision to apply in the instant case. The constitutional jurisdiction of the Public Service Commission to decide on disputes on employment in County Governments is elaborated in section 85 of the Public Service Commission, to wit- ‘85. The Commission shall, in order to discharge its mandate under Article 234(2)(i) of *the Constitution*, hear and determine appeals in respect of any decision relating to engagement of any person in a County Government, including a decision in respect of— (a) recruitment, selection, appointment and qualifications attached to any office; (b) remuneration and terms and conditions of service;’

47. The violation invoked in the prayers is of unfair labour practice which falls within the proper jurisdiction of the Public Service Commission. The Commission has jurisdiction to determine whether the petitioner is entitled to promotion. The court is further guided by the case of National Assembly VS James Njenga Karume Civil Application No.92 of 1992 the court held as follows; “In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievances prescribed by *the Constitution* or an Act of parliament, the procedure should be strictly followed...” There is a clear procedure before the Public Service Commission to be followed by the petitioner for his claims. The court invokes the provisions of Rule 56(5)(c) of its rules that – ‘c) a suit filed prior to exhaustion of such alternative dispute resolution mechanisms may be stayed and not struck out on account of such exhaustion.’ and orders the petitioner to exhaust the process under section 77 of the *County Governments Act* as the cause of action is promotion which falls under jurisdiction of the Public Service Commission. The petition is stayed pending the outcome of the alternative dispute resolution process before the Commission.

48. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 8TH DAY OF MAY, 2026.

JEMIMAH KELI

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Petitioner: Ms Mwanzia h/b Ms Warui

2nd Respondent: Ms Mutua

