



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT KISUMU**

**MISCELLAENOUS APPLICATION NO. E007 OF 2026**

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012

**AND**

IN THE MATTER OF ARTICLES 23(3) (E) AND (F) OF THE  
CONSTITUTION

**AND**

IN THE MATTER OF ARTICLE 41 OF THE CONSTITUTION

**AND**

IN THE MATTER OF SECTION 89(1) OF THE PUBLIC SERVICE  
COMMISSION ACT

**AND**

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM

**ACT**

**BETWEEN**

ONDIGI EDWARD VINCENT & 6 OTHERS.....

**APPLICANTS**

**VERSUS**

THE COUNTY GOVERNMENT OF NYAMIRA.....**1<sup>ST</sup>**

**RESPONDENT**

THE COUNTY SECRETARY & HEAD OF PUBLIC SERVICE, NYAMIRA COUNTY.....**2<sup>ND</sup>**

**RESPONDENT**

THE SECRETARY/CHIEF EXECUTIVE OFFICER, COUNTY PUBLIC SERVICE BOARD NYAMIRA.....**3<sup>RD</sup>**

**RESPONDENT**

THE CHIEF OFFICER, FINANCE & PLANNING NYAMIRA..... **4<sup>TH</sup> RESPONDENT**

**RULING**

1. By way of background, the Applicants were at all material times employees of the County Government of Nyamira serving in various cadres. Between the years 2016 and 2017, they were promoted to different positions within the County Government. However, sometime in the year 2024, the said promotions were revoked on the ground that they had allegedly been irregularly granted. Aggrieved by that decision, the Applicants lodged individual appeals before the Public Service Commission. Upon hearing the appeals, the Commission reinstated the Applicants to their respective

positions without loss of salary and allowances and further directed that they be paid the salary differentials accruing from June 2024. Upon receipt of the Commission's decision, the Applicants wrote to the Respondents requesting implementation thereof. Although the Respondents partially complied by reinstating the Applicants to their former positions, they declined to pay the salary arrears accruing between June 2024 and September 2025 being the period of their demotion on the basis that there was no budgetary allocation for the same. Despite several reminders and demands for payment, no settlement was made, thereby prompting the filing of the present application dated 6<sup>th</sup> February 2026, in which the Applicants seek the following orders:

(1) *Spent*

(2) *That the findings, decision and verdict of the Public Service Commission dated 27<sup>th</sup> August 2025 in County Governments Public Service Appeals No. 075 of 2024 as consolidated with Appeals Nos. 076, 078, 080, 081, 083 and 084 of 2024, Thomson Bala Odhiambo & 6 Others, be adopted by this Court.*

(3) That judgment be entered for the Applicants against the Respondents jointly and severally in line with the Public Service Commission decision dated 27<sup>th</sup> August 2025 in County Governments Public Service Appeals No. 075 of 2024 as consolidated with Appeals Nos. 076, 078, 080, 081, 083 and 084 of 2024, Thomson Bala Odhiambo & 6 Others, as follows:

- (i) Ondigi Edward Vincent - Kshs. 1,076,108/-
- (ii) Beatrice Achieng Owino - Kshs. 261,200/-
- (iii) Jackline Akoth Awuor - Kshs. 261,200/-
- (iv) Bala Thomson Odhiambo - Kshs. 261,200/-
- (v) Dorcas Kwamboka Mokano - Kshs. 261,200/-
- (vi) John Makori Ondieki - Kshs. 465,804/-
- (vii) Wilfred Omwenga Migiro - Kshs. 242,359/-

together with interest on each amount at court rates from the date of the Public Service Commission's decision until payment in full.

(4) That a Certificate of Order against the Respondents jointly and severally be issued through the Deputy Registrar.

(5) *That the costs of the application be provided for.*

2. The application is supported by the grounds on its face as well as the supporting affidavit of Mr. John Makori the 6<sup>th</sup> Applicant. He depones that on 3<sup>rd</sup> June 2024 the Applicants were demoted as follows: Ondigi Edward Vincent from Job Group R to N; Beatrice Achieng Owino from Job Group K to H; Jackline Akoth Awuor from Job Group K to H; Bala Thomson Odhiambo from Job Group K to H; Dorcas Kwamboka Mokano from Job Group K to H; John Makori Ondieki from Job Group P to N; and Wilfred Omwenga Migiro from Job Group M to K. He further depones that the Applicants are entitled to payment of the salary arrears accruing between June 2024 and September 2025 as the Budget and Appropriations Committee Reports, Staff Returns and County Governments (Equitable Share) Cash Disbursement Schedules for the financial years 2023/24 and 2024/25 demonstrated that disbursements made to the County Government included the Applicants' salaries prior to their demotion.

3. According to the Applicants, the only viable avenue for execution against the Respondents is through adoption of the Commission's decision as an order of this Court, given their failure to comply with the Commission's decision as required under section 89(2) of the Public Service Commission Act. They therefore urge the Court to allow the application, contending that it has been filed timeously and that no prejudice will be occasioned to the Respondents.

4. In opposition to the application, the Respondents filed Grounds of Opposition dated 23<sup>rd</sup> March 2026. They contend that the application is defective for having been framed as a judicial review application without leave of the Court having first been sought and obtained. They further argue that the prayers sought do not, in the strict sense, constitute judicial review remedies and that the application therefore contravenes Rule 10(2) of the Employment and Labour Relations Court (Procedure) Rules as read together with Order 53 of the Civil Procedure Rules.

5. The Respondents further contend that they have already complied with the Public Service Commission's decision by reinstating the Applicants to their respective job groups, drawing the Court's attention to the Applicants' admission at paragraph 7 of the supporting affidavit. The Respondents also argue that the sums claimed by the Applicants are *ultra vires* the Commission's decision since the Public Service Commission neither computed nor decreed the specific amounts claimed. They further maintain that the Applicants have not produced any material evidence demonstrating that the salary arrears and allowances directed by the Commission remain unpaid. According to the Respondents, the figures pleaded lack any logical or computational basis and ought therefore to be disregarded.

6. With regard to the supporting affidavit, the Respondents contend that it contains matters that are not within the deponent's personal knowledge, particularly those relating to the Budget and Appropriations Committee Reports, Staff Returns and County Governments (Equitable Share) Cash Disbursement Schedules for the financial years 2023/2024 and 2024/2025. They argue that the documents are

inadmissible under section 2(2) of the Evidence Act since the deponent is neither their maker nor has, he disclosed the source from which the documents were obtained. They further contend that the documents constitute secondary evidence which ought to have been certified in accordance with sections 67 and 68(2)(c) of the Evidence Act. Lastly, the Respondents argue that the deponent lacks expertise in public finance management and accounting and is therefore not competent to render opinions on the contents and implications of the said documents. On that basis, they urge the Court to dismiss the application.

7. The application was canvassed by way of written submissions.

#### Applicants' Submissions

8. The Applicants submit at the outset that this Court is clothed with jurisdiction to enforce the decision of the Public Service Commission pursuant to section 89 of the Public Service Commission Act. They further submit that they complied with the procedural requirements governing adoption of the Commission's decisions under Rule 69 of the Employment and Labour Relations Court (Procedure) Rules by instituting

the matter through a miscellaneous application. On the basis of the foregoing, the Applicants identify the following issues for determination:

- (1) Whether substantive justice overrides technical objections regarding nomenclature under Article 159(2)(d) of the Constitution;
- (2) Whether the Respondents are estopped from challenging a decision they have already partially implemented;
- (3) Whether the Respondents' failure to specifically traverse the liquidated sums amounts to a legal admission of the debt;
- (4) Whether the deponent, Mr. John Makori Ondieki, as a senior officer, is competent to produce the annexed departmental and public documents; and
- (5) Who bears the costs of this application.

9. On the first issue, the Applicants submit that the description of the application as one for “judicial review” is merely a typographical error which does not go to the substance of the matter. They contend that the error is curable under

Article 159(2)(d) of the Constitution, which obligates courts to administer justice without undue regard to procedural technicalities. In support of that position, reliance is placed on **Raila Odinga & 5 others v IEBC & 3 others [2013] eKLR**, for the proposition that procedural lapses should not bar a litigant from accessing justice.

10. With regard to the second issue, the Applicants submit that the Respondents, having already acted upon part of the Public Service Commission's decision by reinstating them to their positions, are estopped from rejecting the portion relating to payment of salary arrears. They maintain that having accepted the validity of the Commission's decision the Respondents' action amounts to approbation and reprobation. They cite **Diamond Trust Bank Limited v Eros Chemist Limited [2000] eKLR**, where the court underscored that a party is estopped from challenging a process they have already acted upon.

11. On the third issue, the Applicants submit that the Respondents' failure to specifically controvert the amounts

claimed, despite being custodians of the payroll records, amounts to an admission of the debt. They assert that a general denial is insufficient to traverse specific liquidated claims and cite **Lordship Africa Limited v 44 on Mamlaka RTM Limited [2022] eKLR** in support of that proposition. As regards the competency of the deponent and the admissibility of the annexed documents, the Applicants submit that John Makori Ondieki, being a senior officer within the County Government of Nyamira, is capable of accessing departmental and budgetary records. They further contend that the impugned documents are public documents within the meaning of section 79 of the Evidence Act and that some are available through official government portals. In the circumstances, they urge the Court to take judicial notice of the same, relying on **Registry of Societies & 2 others v Gichira Kibiru & 2 others [2016] eKLR**, where the Court held that judicial notice may be taken of documents available in the public domain.

12. On costs, the Applicants submit that they are entitled to the same since it is the Respondents' failure to comply fully

with the Commission's decision that necessitated the present proceedings.

### Respondents' Submissions

13. The Respondents, for their part, submit that the application raises three principal issues for determination, namely:

- a. whether the uncertified evidentiary documents annexed to the application are admissible;
- b. what the juristic confines and limits of the application are; and
- c. whether prayer No. 3 of the Notice of Motion is merited.

14. On the admissibility of the documents relied upon by the Applicants, the Respondents maintain that the same are inadmissible for want of proper authentication. They submit that the deponent of the supporting affidavit is neither the maker of the documents nor possessed of personal knowledge regarding their preparation and contents, and is therefore incapable of vouching for their authenticity. Reliance is placed on sections 67 and 68(2)(c) of the

Evidence Act, which require documentary evidence to be proved by primary evidence and permit secondary evidence of public documents only where certified copies are produced. In support of that position, the Respondents rely on **Torino Enterprises Limited v Attorney General [2023] KESC 79 (KLR)**, where the Supreme Court held that public documents within the meaning of section 79 of the Evidence Act are only admissible if duly certified in accordance with sections 68(1)(e), (f), 68(2)(c) and 80 of the Act. Reliance is also placed on the case of **Director of Public Prosecutions v Mwiraria & 6 others (Anti-Corruption and Economic Crimes Revision E005 of 2022) [2022] KEHC 14180 (KLR)**, where the High Court held that uncertified public documents obtained locally and through mutual legal assistance were inadmissible. The Respondents further submit that the deponent lacks demonstrable expertise in public finance management and accounting and is therefore not competent to render opinions on the contents and implications of the impugned documents. They also contend that the Applicants' assertions that the deponent is a senior county officer and

that the documents were sourced from official websites constitute evidentiary matters improperly introduced at the submissions stage without having been deposed to in the supporting affidavit. Consequently, the Respondents maintain that the application lacks a proper evidentiary foundation.

15. On the juristic confines and limits of the application, the Respondents submit that this Court's mandate is confined strictly to adopting and enforcing the Public Service Commission's decision as rendered. In that regard, they rely on section 89 of the Public Service Commission Act together with Rule 69 of the Employment and Labour Relations Court (Procedure) Rules. They therefore contend that the monetary awards sought by the Applicants are not awardable since they were neither expressly quantified nor decreed by the Commission.

16. Finally, as to whether prayer No. 3 of the application is merited, the Respondents submit that the same is misconceived because the Public Service Commission neither computed nor decreed the sums claimed. They reiterate that

the prayer is *ultra vires* the Commission's decision and raises substantive factual questions relating to whether any salary arrears remain unpaid, the applicable period, and the proper quantum payable. The Respondents further submit that the Applicants have failed to plead or demonstrate any logical or computational basis for the figures claimed and have consequently failed to discharge the evidential burden placed upon them. They accordingly urge the Court to dismiss the application with costs.

#### Disposition

17. There is no doubt that this Court is clothed with jurisdiction to enforce the decision of the Public Service Commission pursuant to section 89 of the Public Service Commission Act. The question before the Court is whether the motion before the court is merited. At the onset, the Applicants assert that the description of the application as one for "judicial review" is merely a typographical error which does not go to the substance of the matter. They contend that the error is curable under Article 159(2)(d) of the Constitution, which obligates courts to administer justice without undue regard to procedural technicalities. In support

of that position, reliance is placed on **Raila Odinga & 5 others v IEBC & 3 others [2013] eKLR**, for the proposition that procedural lapses should not bar a litigant from accessing justice. The decision in the case of **Raila Odinga & 5 others v IEBC & 3 others** (*supra*) was determined on 16<sup>th</sup> April 2013 when the Constitution of Kenya 2010 was still new. At the time parties were excused from not fully appreciating the nuances in procedure under the law obtaining as the new Constitution had caused a ripple of changes in the law in force at the time. Statutes were to be interpreted in light of the permissiveness vogue at the time. This is May 2026, almost 16 years since the promulgation of the Constitution. Parties cannot be seen to be tottering in the dark regarding what procedure to use, what titles to give in proceedings before the Court. Judicial review is *sui generis* and plainly deals with the review by a court of the process and legality of a decision by a quasi-judicial authority or public office. When a party mistakes their pleadings for that which those proceedings are not, there can be no cover under Article 159(2)(d) of the Constitution. This Article is not a panacea for the poor

appreciation of procedure and misclassification of proceedings cannot be covered under the rubric of “without undue regard to procedural technicalities”. The provision is granular and relates to the undue regard to procedural technicalities. The key word is undue. The word undue, is an English adjective and means **excessive, unwarranted, or disproportionate, exceeding what is reasonable or necessary**. It is not excessive, unwarranted or disproportionate nor does it exceed what is reasonable or necessary to expect a litigant to bring the correct motion/action to Court for determination.

18. The motion before the Court was, and still is, a poor effort at moving the court for relief. The other problem with the motion is that the Applicants seek to quantify a decision that had no indication of figures. In other words, there is an attempt to convert the decision of the Public Service Commission which did not compute sums payable into a decree of the court. There is an attempt to rewrite the decision issued. What the Applicants ought to have done is seek the computation of the figures that they feel were awarded to them by the Public Service Commission. When

the decision speaks of salary without specifics it merely gives parties hopes without giving actual relief. The proper course would be to have the sums calculated to permit a definitive determination capable of enforcement by the Court. Procedural lapses cannot be cured by calling into aid the provisions of Article 159(2)(d) of the Constitution. As the motion seeks that which a Court of law cannot grant in the manner the action is framed, the only option is to dismiss the judicial review application albeit with no order as to costs.

It is so ordered.

**Dated and delivered at Kisii this 13<sup>th</sup> day of May 2026**

**Nzioki wa Makau, MCI Arb.  
JUDGE**