



**Odundo aka Odundo Tobias Samson v County Government of Homa Bay  
(Cause E072 of 2024) [2025] KEELRC 611 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 611 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E072 OF 2024  
NZIOKI WA MAKAU, J  
FEBRUARY 27, 2025**

**BETWEEN**

**TOBIAS ODUNDO AKA ODUNDO TOBIAS SAMSON ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF HOMA BAY ..... RESPONDENT**

**RULING**

1. For consideration before me is a notice of preliminary objection dated 22<sup>nd</sup> November 2024 raised by the County Government of Homa Bay (the Respondent) in response to the Memorandum of Claim dated 10<sup>th</sup> July 2024. The Respondent argues that this court lacks jurisdiction to entertain the claim due to non-compliance with Article 234(2)(i) of the *Constitution*, section 87(2) of the Public Service Act, and section 77 of the *County Governments Act*.
2. On 26<sup>th</sup> November 2024 the court issued directions on filing and exchanging of submissions. However, despite being granted numerous opportunities the Respondent failed to file submissions as at the time of penning this Ruling. On his part the Claimant filed submissions dated 20<sup>th</sup> January 2025.

**Claimant's Submissions**

3. The Claimant submits that the definition of a preliminary objection as stated to be a pure point of law that arises clearly from the proceedings and has the potential to dispose of the suit. He relies on the case of *Mukisa Biscuits Manufacturing Co. v West End Distributors Ltd* [1969] EA 696, where a preliminary objection was described as being:

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



4. The Claimant submits that this Court has jurisdiction to entertain this suit given the liquidated nature of the claim. He highlights that his service gratuity was ascertained by the Respondent at Kshs. 3,281,040/-. To support his position, he cites the case of *Cimbria East Africa Limited v Kenya Power & Lighting Company Limited* [2017] eKLR, where a liquidated demand was defined as a debt that is easily ascertainable through simple arithmetic without requiring an in-depth investigation. The Claimant submits further that this Court has jurisdiction, and references section 77 of the [County Governments Act](#) which he asserts does not provide enforcement mechanisms. Moreover, he asserts that the Public Service Commission only exercises appellate jurisdiction over decisions made by the County Public Service Board and therefore, lacks the authority to entertain his claim.
5. In support of this argument the Claimant reiterates that the Court has not been invited to compute the gratuity, and since this case concerns the Respondent's non-compliance, it does not fall within the scope of section 77(1) of the [County Governments Act](#). Moreover, he asserts that an interpretation of section 77 of the [County Governments Act](#), together with section 87(2) of the [Public Service Commission Act](#), suggests that the Public Service Commission's role in enforcing decisions from the County Public Service Board is limited to:
  1. Reviewing the legality, fairness, and propriety of the County Public Service Board's decisions.
  2. Reviewing facts and evidence before the County Public Service Board to determine whether their decision was justified.
  3. Reversing or modifying decisions made by the County Public Service Board.
6. The Claimant submits that based on the foregoing, only this Court can provide him with an avenue for redress. He further asserts that the Preliminary Objection is merely a tactic employed by the Respondents to evade their legal obligations. Consequently, he urges the Court to dismiss the Preliminary objection with costs.
7. The Respondent did not file any submissions and the Court has considered the submission of the Claimant and the law in coming to this decision. The objection raised portends that the Claimant has not exhausted the remedies available under section 87(2) of the Public Service Act and section 77 of the [County Governments Act](#). It is argued that this Court therefore lacks jurisdiction to entertain the suit. In reply, the Claimant asserts that this is not a dispute covered by section 77 of the [County Governments Act](#) and section 87(2) of the Public Service Act. He asserts the Acts do not provide an enforcement mechanism as his dispute is on payment not what is covered under those sections. The [County Governments Act](#) at section 77 makes provision for the matters that can be appealed against before the County Public Service Board. Indeed, the matter of retirement benefits and the like are subject of the provisions of the Act and therefore to merely assert there is no enforcement mechanism is to completely miss the point. The law makes provision for the handling of a matter such as this under section 77. In the case of *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR, Civil Appeal 10 of 2015 the Court of Appeal (Waki, Nambuye, Kiage JJA) held thus:-

It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of the [Constitution](#) which commands Courts to encourage alternative means of dispute resolution.



We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely.

[Underline supplied for emphasis]

8. In this case, the Claimant was suspected to have fallen in error by allegedly failing to exhaust the dispute resolution mechanisms in place. It is asserted that he ran afoul of statutory imperatives in sections of the County Governments Act as well as constitutional edicts in Article 159(2) of the Constitution. The claim was presented on 11<sup>th</sup> September 2024 while the matters complained of occurred on 2<sup>nd</sup> February 2023. By the time the Claimant approached the Court, time had lapsed for him to seek the reprieve of the avenue prescribed in statute. He therefore approached the Court as a last resort having been frustrated in recovery of the computed gratuity which is an employment matter. I find the objection raised to lack merit and dismiss it with costs to the Claimant. Directions on disposal of the claim to follow this Ruling.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

