



**Republic v Kajiado County Public Service Board; Public Service Commission (Interested Party); Gitonga & another (Exparte Applicants) (Judicial Review Application E017 of 2024) [2025] KEELRC 481 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 481 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW APPLICATION E017 OF 2024**

**B ONGAYA, J**

**FEBRUARY 21, 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE JUDICIAL REVIEW PROCEEDINGS UNTO THIS HONOURABLE COURT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS AGAINST THE RESPONDENT**

**AND**

**IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT, CAP 185 & THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022, THE CONSTITUTION OF THE REPUBLIC OF KENYA AND THE COUNTY GOVERNMENT ACT, NO. 17 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010 AS READ WITH SECTIONS 8 AND 9 OF THE LAW REFORMS ACT, CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ENFORCEMENT OF SECTION 89 OF THE PUBLIC SERVICE COMMISSION ACT, CAP 185**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KAJIADO COUNTY PUBLIC SERVICE BOARD ..... RESPONDENT**

**AND**

**THE PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**



**AND**

**RENSEN KINOTI GITONGA ..... EXPARTE APPLICANT**

**BENSON GITHAIGA WAHOME ..... EXPARTE APPLICANT**

*(Before Hon. Justice Byram Ongaya on Friday 21st February, 2025)*

**JUDGMENT**

1. The ex-parte applicants filed the notice of motion dated 04.12.2024 through Amutallah Robert & Company Advocates, under section 3A of the *Civil Procedure Act*, Order 51 rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law. They seek the following orders:
  - a. That this Honourable Court be pleased to adopt as a judgement of this court the decision dated 13.09.2023 by the Public Service Commission sitting at Nairobi as against the respondent herein.
  - b. That this Honourable Court be pleased to grant the applicants an order of Mandamus for the respondent to be compelled to enforce the decision dated 13.09.2023 by the Public Service Commission sitting at Nairobi as against the respondent herein as a decree of this Honourable Court.
  - c. All necessary and consequential orders be given.
  - d. An order that the respondents do pay the costs of the proceedings.
2. The application was based upon the following grounds:
  - i. The Public Service Commission (PSC) rendered its decision on 13.09.2023 as against the respondent as follows:
    - a. That the County Government of Kajiado and Kajiado County Public Service Board does absorb the appellant[s] into permanent and pensionable employment of the county with effect from the date of this decision.
    - b. That the County Public Service Board to consider a salary increment for the appellant[s] and implement the same within 12 months of this decision.
    - c. That the County Public Service Board to consider the appellants for promotion upon absorbing them into the permanent and pensionable employment of the county.
    - d. That the County Public Service Board and the County Secretary Kajiado Government be and are hereby directed to implement this decision.
  - ii. Despite demand and notice of intention to institute enforcement proceedings of the award having been given, the respondent has refused, neglected and/or otherwise failed to comply with any of the Orders made by the PSC as detailed above.
  - iii. No order has to date been made by the Honourable Court setting aside or staying the enforcement of the said decision.
  - iv. The decision of the PSC has been duly filed in the instant suit and the respondent duly notified of the same.



- v. It is just and equitable that the applicants be heard and necessary orders to issue to safeguard their rights to access to labour, economic and social rights by way of the judicial review orders sought herein.
  - vi. The interest of justice is in favour of allowing the applicants' application herein.
  - vii. The respondent's actions and intentions are otherwise unlawful, irregular and unwarranted and infringe on fair labour practices as enshrined under Article 41(2) (a) and 41(2)(b) of *the Constitution* of Kenya, 2010.
3. The applicants further relied on their verifying affidavit sworn on 18.04.2024, in which they stated as follows:
- i. The applicants were employed by PSC as Accountant II on 28.11.2011 and 18.10.2010 under the Ministry of Health and thereafter both employed by the National Government in the same capacity.
  - ii. Upon devolution of staff of the Ministry of Health to the County Government, the applicants were seconded to Kitengela Sub-County Hospital and Loitoktok Sub-County Hospital where they continue to work to date. However, they have never been confirmed by either the National Government or the County Government on permanent and pensionable terms and thus lodged their grievance with the PSC.
  - iii. The respondent had an opportunity to challenge the decision of the PSC on revision or appeal but has failed to comply with the said decision to date. Notably, the respondent was served with the said decision of the PSC on 08.11.2023 by a letter dated 19.09.2023.
  - iv. The orders sought in the present application should therefore be upheld to meet the ends of justice otherwise the whole object of the PSC decision will be rendered nugatory.
  - v. The applicants continue to suffer economic and financial constraints as a result of underpayment and have been stagnant in one position for the last nine (9) years without any promotion, earning the same salary despite the current inflation of the economy. That under the PSC Act, a public servant ought to be promoted to higher grade as long as they have the requisite academic, professional qualifications and have served for at least three (3) years irrespective of their performance.
  - vi. The applicants are being discriminated, which is a clear violation of *the Constitution*. This Court should therefore grant the order of Mandamus to compel the respondent to comply with the PSC Award dated 13.09.2023 within the confines of the law.
4. The application was unopposed (despite service) as the respondent and the interested party did not file any response to the substantive notice of motion dated 04.12.2024.
5. The applicants filed their submissions dated 20.01.2025 while the respondent and interested party did not file any written submissions on the substantive motion.
6. The applicants have exhibited the decision by the Public Service Commission dated 19.09.2023 and 13.09.2023. It is established that the decision was directed to the respondents to act but they have failed to do so. There is no doubt that the respondents have the statutory and public duty to act as directed but have neglected or refused to act accordingly. There is no reason to doubt that the respondents are aware of the decision and their need to comply as a matter of public duty. The Commission did



not oppose the application. The application will succeed with orders that the respondents to pay the applicants' costs of the proceedings.

In conclusion judgment is hereby entered for the applicants jointly and severally against the respondents for orders as follows:

1. That the Honourable Court hereby adopts as a judgement of the court the decision dated 13.09.2023 by the Public Service Commission sitting at Nairobi as against the respondents herein.
2. That the Honourable Court hereby grants the applicants an order of Mandamus for the respondent to be compelled to enforce the decision dated 13.09.2023 by the Public Service Commission sitting at Nairobi as against the respondent herein as a decree of this Honourable Court.
3. The respondents to pay the applicants' costs of the proceedings.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 21<sup>ST</sup> FEBRUARY, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

