



**Chemkendo v County Government of West Pokot & 3 others  
(Miscellaneous Application E004, E002, E003 & E005 of 2024  
(Consolidated)) [2025] KEELRC 1040 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1040 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
MISCELLANEOUS APPLICATION E004, E002, E003 & E005 OF 2024 (CONSOLIDATED)  
MA ONYANGO, J  
MARCH 28, 2025**

**BETWEEN**

**JACOB AMEME CHEMKENDO ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF WEST POKOT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF WEST  
POKOT ..... 2<sup>ND</sup> RESPONDENT**

**SECRETARY, COUNTY PUBLIC SERVICE BOARD WEST POKOT  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**PAYROLL OFFICER, WEST POKOT COUNTY GOVERNMENT ... 4<sup>TH</sup>  
RESPONDENT**

**RULING**

1. This ruling relates to a series of four files Misc. Application No. E002 of 2024, Misc. Application No. E003 of 2024, Misc. Application No. E004 of 2024 and Misc. Application No. E005 of 2024.
2. A brief background of the matter before this court is that the Applicants moved the court vide applications dated 14<sup>th</sup> June 2024 in Misc. Application No. E002 of 2024 and Misc. Application No. E003 of 2024, and 19<sup>th</sup> June 2024 for Application No. E004 of 2024 and Misc. Application No. E005 of 2024 respectively seeking for orders that the decision of the Public Service Commission delivered on 13<sup>th</sup> March 2024 be adopted and enforced as a judgment of this court and the Respondents be compelled to pay the Applicants salary arrears and damages as assessed by the Public Service Commission as communicated vide the letter dated 15<sup>th</sup> March 2024.



3. In response to the applications, the Respondents filed Replying affidavits sworn on 18<sup>th</sup> September 2024 by Jonathan Siwanyang, County Secretary who is the 1<sup>st</sup> Respondent herein. The Respondents contend that they were dissatisfied with the decision of the Public Service Commission delivered on 13<sup>th</sup> March 2024 and had filed an application for review of the decision pursuant to section 88 of the Public Service Act as read together with Regulation No. 24 of the Public Service Commission (County Appeals Procedure) Regulations 2022.
4. The Respondents state that their application for review is pending before the Public Service Commission for determination and therefore the Applicants had invoked the jurisdiction of the court prematurely. They prayed for the dismissal of the applications dated 14<sup>th</sup> June 2024 and 19<sup>th</sup> June 2024.
5. Before the applications were heard, the Applicants in Misc. Application No. E002 of 2024, E003 of 2024 and E005 of 2024 filed applications dated 22<sup>nd</sup> October 2024 seeking for orders that:
  - i. This application be certified as urgent and be heard ex-parte in the first instance and service be dispensed with forthwith.
  - ii. Pending the hearing and determination of this application inter-partes a temporary injunction be and is hereby issued staying the disciplinary proceedings against the Applicant to be heard on 25<sup>th</sup> October 2024.
  - iii. Pending the hearing and determination of this Claim (adoption proceedings) this Honourable court be pleased to issue a temporary injunction restraining the Respondents, their agents, servants and any person whatsoever from terminating the Claimants from their current positions as employees of the 1st Respondent.
  - iv. Costs of this application be provided for.
6. The applications are based on the grounds on the face thereof and Supporting Affidavits of the Applicants of even date where they contended that the Respondents instituted disciplinary proceedings against them which were to be heard on 25<sup>th</sup> October 2024 on grounds that the Applicants had not been at work as from 10<sup>th</sup> August 2023 to date. According to the Applicants, this issue was never raised by the Respondents in their Response to Claim in Kitale ELRC Cause No. E097 of 2022 and neither was this the position of the Respondents in their reply at the Public Service Commission County Appeal No. E075 of 2023. That the issue was also not raised in their Replying affidavits in the adoption application pending before this court for determination. The Applicants aver that the assertion that they absconded duty is an afterthought and an attempt to circumvent the due process of this court.
7. In opposition to the applications dated 22<sup>nd</sup> October 2024, the Respondents filed Replying affidavits sworn on 25<sup>th</sup> November 2024 by Jeffrey Kapatet, the 1<sup>st</sup> Respondent's Acting Human Resource Director. The deponent asserted that the Applicants had since August 2023 not reported to work without reasonable or justifiable cause. According to the Respondents, in spite of the Applicants having been warned against absenteeism, and in spite of being issued with notice to show cause why they should not be disciplined, the Applicants have refused to report to work.
8. In response to the averment made by the Applicants that the intended disciplinary proceedings against them are a way of punishing them as a result of the decision of Public Service Commission, the Respondents contend that the Applicants absenteeism constitutes a different and separate cause of action from that in Kitale ELRC Cause No. E007 of 2023 and that the Applicants are not immune to disciplinary actions where they breach the terms of their employment.



9. Contemporaneously, the Respondents filed a Notice of preliminary objection dated 25<sup>th</sup> November 2024 on the following grounds:
  - i. The Honorable Court is bereft of the required jurisdiction to entertain the matter by dint of section 77 of the [County Governments Act](#) and section 87(2) of the [Public Service Commission Act](#).
  - ii. The application violates the principle of exhaustion in dispute resolution.
  - iii. An interlocutory application cannot stand on its own. Neither can orders issue under such an application.
  - iv. The application is incompetent, incurably defective and gross abuse of the process of the Honorable Court.
10. The application dated 22<sup>nd</sup> October 2024 and the Preliminary Objection dated 25<sup>th</sup> November 2024 were argued orally in court on 29<sup>th</sup> January 2025. Mr. Magal for the Respondent submitted that the Applicants have appeals before the Public Service Commission and the application dated 22<sup>nd</sup> October 2024 ought to have been filed before the Public Service Commission for grant of the interim reliefs. The Respondent's counsel maintained that by filing the applications dated 22<sup>nd</sup> October 2024 before this court the Applicants contravened the express provisions of section 77 of the [County Governments Act](#) and section 85 of the [Public Service Commission Act](#).
11. It is also the Respondents case that the application dated 22<sup>nd</sup> October 2024 is improper because it is filed under another application. According to the Respondents, an interlocutory application cannot stand on its own and the application to enforce the orders of the Public Service Commission cannot be used to hold another application.
12. Counsel Magal prayed that the application be dismissed for violating the exhaustion rule and for not being founded on a cause of action.
13. In opposing the Preliminary objection, Counsel Yego termed it misconceived and without any legal basis. In response to the first ground, the Applicants' counsel submitted that this court is properly seized of this matter pursuant to rule 17(1) and 17(3) of the ELRC Court Procedure Rules 2016. While citing section 87 of the [Public Service Commission Act](#) which stipulates that a person shall not file a matter in court on matters within the jurisdiction of the Public Service Commission unless such procedure has been exhausted, the Applicants' counsel contended that the Public Service Commission has already determined the appeal in favour of the Applicants and is now functus officio.
14. According to Counsel Yego, the Respondents are flouting the law by opting to undertake disciplinary proceedings against the Applicants instead of submitting to the authority of this court. It is further contended that a notice to show cause does not constitute a disciplinary control as defined by section 2 of the [Public Service Commission Act](#) and that as such, this court is well seized to handle the application dated 22<sup>nd</sup> October 2024 as no decision has been rendered in respect of the Notice to show cause. That the jurisdiction of Public Service Commission would be premature if invoked at this stage.
15. With regard to the ground raised by the Respondents that the interlocutory application is standing on its own, the Applicants' counsel submitted that prayer (b) in the application dated 22<sup>nd</sup> October 2024 seeks orders of a temporary nature pending the determination of substantive application filed in June 2024 and that the substratum of the case is the adoption proceedings. Counsel urged the court to dismiss the Preliminary objection for being incompetent.



16. In his rejoinder, counsel Magal submitted that the interim orders seek stay of proceedings against the Applicants and according to the Respondents, an interlocutory application can only be premised on a cause of action and cannot be based on another application. It is further submitted that the miscellaneous application does not make the Public Service Commission functus officio as alluded by the Applicants as the Respondents have filed a substantive application before it for review of its decision. On this basis, the Respondents counsel maintained that this court's jurisdiction has been prematurely invoked. He reiterated that the application dated 22<sup>nd</sup> October 2024 together with the interim orders granted be dismissed.

### **Determination**

17. I have considered the Applications on record, the Preliminary Objection, the Affidavits and the oral submissions by counsel for the parties. The issues for determination are whether the Preliminary Objection dated 25<sup>th</sup> November 2024 and the application dated 22<sup>nd</sup> October 2024 are merited.
18. I will start by considering the Preliminary Objection. In the Preliminary objection dated 25<sup>th</sup> November 2024, the Respondents fault the Applicants for hosting an interlocutory application in another interlocutory application, for invoking the jurisdiction of this court before exhausting the internal dispute resolution mechanisms and for filing the applications before this court in a matter pending before the Public Service Commission.
19. The Applicants in opposition to these arguments contended that the Public Service Commission already rendered a decision in the matter and that the only remaining issue was the adoption of its decisions rendered on 13<sup>th</sup> March 2024. It is the Applicant's case that the Public Service Commission functus officio having already made its decision.
20. The main prayer in the Applicants' applications dated 22<sup>nd</sup> October 2024 is prayer (c) which reads:
- “c. Pending the hearing and determination of this claim (adoption proceedings) this court be pleased to issue a temporary injunction restraining the Respondents from terminating the Claimants from their current positions as employees of the 1<sup>st</sup> Respondent.”
21. The applications herein are dated 14<sup>th</sup> and 19<sup>th</sup> June, 2024. They were filed for purposes of implementation of the decision of the PSC. The applications for review the PSC decision is dated 17<sup>th</sup> December, when the applications herein were already in court. At the time of filing of the applications herein there was no decision pending before the PSC as the applications for review had not been filed.
22. The applications dated 22<sup>nd</sup> October 2024 seek interim orders pending the determination of the application already before this court. In view of the fact that at the time of filing the applications dated 22<sup>nd</sup> October, 2024 there was already an application pending before this court the Applicants were therefore within their rights to file the applications dated 22<sup>nd</sup> October, 2024 in this court in view of the fact that the orders sought therein are related to the application pending before this court.
23. It therefore follows that this court is not bereft of jurisdiction to deal with the application dated 22<sup>nd</sup> October 2024 which seeks interim orders pending the enforcement of the Public Service Commission decision rendered on 13<sup>th</sup> March 2024.
24. The Respondents further objection is that an interlocutory application can only be premised on a cause of action and cannot be based on another application. I think this is a matter that depends on the specific circumstances of each case and on the nature of the application. As I have already explained



- above, the application dated 22<sup>nd</sup> October, 2024 seeks interim orders pending the determination of the application already before this court. The most appropriate place to make the application was therefore within the application upon which it is anchored. I see no problem with the filing of the application within the instant Miscellaneous application. I am not aware of any rules that would prohibit the same.
25. The final ground of objection is that the applicants have pending appeals before the PSC. I do not think this is factual. Their appeals before the PSC were concluded and they are before this court to enforce the same. What is pending before the PSC is an application for review by the Respondents filed after the instant applications for enforcement were already before this court.
  26. I therefore find that the applications dated 22<sup>nd</sup> October 2024 are properly before this court. The preliminary objection is thus without merit.
  27. As to whether the application dated 22<sup>nd</sup> October 2024 is merited, the Applicants' counsel has submitted that the Respondents have issued Notice to Show Cause letters to the Applicants requiring them to show cause why their employment should not be terminated for reasons that they have absconded duty since August 2023.
  28. It is not clear from the application how the application for enforcement of the PSC decision pending before this court would impact the disciplinary process commenced by the Respondents against the Applicants. The Applicants have not stated in their application whether or not the accusations against them to the effect that they have not been reporting to work is true or not. They have further not stated how the disciplinary process would impact their review pending before the PSC.
  29. This court is not supposed to be used to manage the internal affairs of an employer. The court's intervention is only supposed to be invoked if what the employer is doing is against the law, its regulations or contravene the rights of an employee.
  30. This was the holding of the court in *MTM V KIE Limited & Another (2020) eKLR*, where the court held that: -
  31. "Courts have held that courts will interfere with internal disciplinary action only when the process is flawed. The interference will thus be to put back on truck the disciplinary process but not to do away with it all together..."
  32. Again in *Rosemary Waitherero Mburu VS Kenya Airways Limited (2020) eKLR* the court reiterated the same principle as follows: -

"Courts are reluctant to interfere with an employer's internal disciplinary process unless it is evidently flawed and in breach of the law and such interference will only be limited to putting the process to the right course.
  33. As I have pointed out above, the Applicants have not stated what is wrong with the process that has been commenced by the Respondent. The only averment made in the application is that the issue was not raised in *Kitale ELRC Cause E007 of 2022* and *County Appeal No. 078 of 2023*. I do not see how these grounds would prevent the Respondents from commencing the disciplinary process now if indeed the Applicants have not been reporting to work.
  34. For the forgoing reasons I find no merit in the applications dated 22<sup>nd</sup> October, 2024 and dismiss the same.
  35. Each party shall bear its costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28<sup>TH</sup> DAY OF MARCH 2025**



**MAUREEN ONYANGO**  
**JUDGE**

