



**Republic v Tharaka Nithi Public Service Board & another; Nicholas
(Exparte Applicant) (Employment and Labour Relations Judicial Review
E004 of 2024) [2025] KEELRC 932 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 932 (KLR)

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E004 OF 2024**

ON MAKAU, J

MARCH 26, 2025

**IN THE MATTER OF: ARTICLES 1, 2, 10, 22, 23, 35, 40, 47, 48, 50, 73,
75, 155, 159, 161, 162 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF: THE PUBLIC SERVICE COMMISSION ACT, 2017

AND

**IN THE MATTER OF: MWONGOZO, THE CODE OF
GOVERNANCE FOR STATE CORPORATIONS, JANUARY, 2015.**

AND

IN THE MATTER OF: THE DOCTRINE OF THE LEGITIMATE EXPECTATIONS

AND

IN THE MATTER OF: THE FAIR AND ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

REPUBLIC APPLICANT

AND

THARAKA NITHI PUBLIC SERVICE BOARD 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

AND

LAWRENCE MUTEEMBEI NICHOLAS EXPARTE APPLICANT



RULING

1. This ruling relates to the 1st respondent's Notice of Preliminary Objection dated 25th June 2024 which objects to the Notice of Motion dated 24th May 2024. The objection stands on the ground that the court lacks jurisdiction to entertain the motion since the applicant did not exhaust internal appeal mechanism provided under the [Public Service Commission \(PSC\) Act](#).
2. It was submitted for the 1st respondent that the court lacks jurisdiction to entertain the motion since the applicant did not exhaust the appeal mechanism provided by section 88 of the [Public Service Commission Act](#) and Regulation 24 of the [Public Service Commission \(County Appeals Procedures\) Regulations 2022](#), which require that any party dissatisfied by the Commission's decision may seek review within six months from the date of the decision. It was contended that the statutory framework intended that all internal remedies are exhausted before escalating the matter to judicial review.
3. It was submitted that the applicant never followed the procedure for review before the PSC within the six months period and therefore the suit is premature and procedurally flawed. For emphasis, reliance was placed on the Supreme Court's decision in [Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others](#) where the court held that all alternative remedies must be exhausted before invoking court's jurisdiction.
4. On the other hand, it was submitted that the preliminary objection is moot as it was automatically dismissed when the 1st respondent failed to file submissions within the 14 days given by the court on 23rd July 2024. It was pointed out that court directed the 1st respondent to file submissions within 14 days and in default the preliminary objection would stand dismissed automatically. It was submitted that the 1st respondent never complied with the court order and instead filed its submissions on 6th September 2024 after the automatic dismissal of the objection.
5. In addition, it was submitted that the objection lacks merit since the court has jurisdiction to issue judicial review in instances where administrative bodies breach the law and the constitution. It was further submitted that the 2nd Respondent made irrational and unreasonable orders that are amenable to judicial review. Further that the 2nd respondent cannot sit on appeal of its own decision.
6. In view of the foregoing submissions, the court was urged to dismiss the preliminary objection and allow the Notice of Motion dated 24th May 2024 with costs.
7. Having considered the submission made by both sides, the issues for determination are:
 - a. Whether the preliminary objection is now moot.
 - b. Whether the preliminary objection should be allowed.

Whether the Objection is now Moot

8. The Applicant submitted that the preliminary objection was rendered moot when the 1st Respondent failed to comply with the orders of the court made on 23rd July 2023. The order was to the effect that: -

“The Preliminary Objection is not on record. It will be printed shortly. In the meanwhile, the parties are directed to file submissions to dispose of the preliminary objection.

Respondents have 14 days to file and serve the applicant and in default the preliminary objection shall stand dismissed automatically.



The Applicant will have 14 days after service by the respondent to file and serve submissions.

Mention for taking ruling date on 24th September 2024.”

9. The 1st respondent failed to comply with the above express order and instead waited until 6th September 2024 when it filed the submissions to prosecute the objection. The effect of the default is that the objection was automatically dismissed by operation of the court order of 23rd July 2024. It follows that the submissions being filed about one and a half months were too late and could not resuscitate the dead horse.
10. In view of the foregoing, I find that the Notice of Preliminary Objection dated 25th May 2024 was automatically dismissed after 14 days from 23rd July 2024 when the 1st respondent failed to file submissions to prosecute it. Consequently, I agree with the applicant’s submissions that the objection is now moot and it is hereby dismissed to pave the way for hearing of the Applicant’s notice of motion dated 24th May 2024. The 1st respondent is condemned to pay costs of the preliminary objection to the Applicant.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF MARCH, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

