



**Republic v County Public Service Board Kiambu & 8 others; Nene (Exparte) (Judicial Review Application E046 of 2023) [2025] KEELRC 723 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 723 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW APPLICATION E046 OF 2023**

**B ONGAYA, J  
MARCH 7, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY PUBLIC SERVICE BOARD KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE COUNTY, COUNTY OF KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

**CECM LANDS, HOUSING, PHYSICAL PLANNING, MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT, COUNTY OF KIAMBU ..... 3<sup>RD</sup> RESPONDENT**

**CECM FINANCE, ICT AND ECONOMIC PLANNING, COUNTY OF KIAMBU ..... 4<sup>TH</sup> RESPONDENT**

**CHIEF OFFICER LANDS HOUSING, PHYSICAL PLANNING, MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT, COUNTY OF KIAMBU ..... 5<sup>TH</sup> RESPONDENT**

**CHIEF OFFICER REVENUE, ICT, SUPPLY CHAIN MANAGEMENT & INTERNAL AUDIT, COUNTY GOVERNMENT OF KIAMBU ..... 6<sup>TH</sup> RESPONDENT**

**DIRECTOR INTERNAL AUDIT, COUNTY GOVERNMENT OF KIAMBU ..... 7<sup>TH</sup> RESPONDENT**

**DIRECTOR REVENUE, COUNTY GOVERNMENT OF KIAMBU .... 8<sup>TH</sup> RESPONDENT**

**DIRECTOR HUMAN RESOURCE MANAGEMENT, COUNTY GOVERNMENT OF KIAMBU ..... 9<sup>TH</sup> RESPONDENT**



AND

MICHAEL NJUGUNA NENE ..... EXPARTE

JUDGMENT

1. The applicant filed the notice of motion dated 07.10.2024 through JN &P Law Advocates LLP. The applicant prayed for judgment for the following orders:
  - a. An order of certiorari to quash the unilateral decision by the 2<sup>nd</sup> respondent to interdict the ex-parte applicant and from further withholding his salary and other accrued benefits.
  - b. An order of certiorari to issue quashing the special audit report by the 7<sup>th</sup> respondent which report failed to adhere to laid down procedures of internal audit.
  - c. An order of mandamus to issue compelling the respondents to facilitate the ex-parte applicant to resume his duties as the duly appointed Senior Land Valuation Assistant Kiambu County Government with full pay and without loss of any benefits and seniority, responsibilities and physical office space occupied prior to the interdiction.
  - d. An order of prohibition restraining the respondents whether acting jointly or severally by themselves, their agents, their servants, representatives or howsoever or otherwise from frustrating or taking any action against the ex-parte applicant including disqualification from competitive interview of any position competitively, re-designation, deployment, secondment or any action that affects the ex-parte applicant contract of employment and his labour rights contrary to relevant law and following the due process.
  - e. An order of prohibition do issue directed against the respondents whether acting jointly or severally by themselves, their agents, their servants, representatives or howsoever or otherwise from interdicting the ex-parte applicant based on the impugned Special Audit report dated 08.11.2023 by the 7<sup>th</sup> respondent.
  - f. Any other and further relief deemed fit and just.
  - g. Costs of the application.
2. The application was opposed by the replying affidavit sworn on 20.02.2025 by Waithera Waityaki, the County Attorney and filed through W.J Ithondeka & Company Advocates.
3. The facts of the case are rather straight forward per the affidavits filed for parties. The impugned special audit was undertaken and it is said it disclosed risk or actual loss of Kshs.13, 556,354.00. The matter was further investigated resulting into the issuance of the impugned interdiction and show cause letter challenged by the applicant. The applicant was emplaced on interdiction with half pay. The applicant responded to the notice or letter to show cause and the response is exhibited.
4. The applicant's case is that the interdiction was arbitrary and made without giving him an opportunity to respond to the special audit report. He was not aware that a special audit report was underway. The applicant attacks the audit report as inaccurate and amounting to a predetermined decision to dismiss him. He also attacks it as wanting in compliance with sound audit standards and procedures. He states that his salary has been unfairly withheld and his family is suffering irreparably.



5. For the respondent it is stated that all laid down procedures have been followed in interdicting the applicant. The interdiction is an internal disciplinary process undertaken in accordance with the law. The public funds in issue are substantial and it is appropriate that the applicant undergoes the disciplinary procedure. Nothing is shown that the disciplinary procedure is being undertaken unlawfully. If the applicant is exculpated, he will then be entitled to be paid the withheld payment in view of the interdiction.
6. The Court has considered the final submissions filed for parties and returns as follows:
- a. As submitted for the respondents, the applicant has not shown any provision of law or regulation or policy and practice that was breached in the manner he was interdicted and required to answer to the notice to show cause. To that extent, the applicant has failed to establish any of the grounds for judicial review that would justify the making of the orders as prayed for.
  - b. As submitted for the respondents and in absence of any other material and relevant contractual or statutory provision to the contrary, the interdiction was a preliminary step to facilitate full disciplinary process. Being a preliminary step, it appears to the Court that it was misconceived for the applicant to require that he is given a notice and a hearing prior to the imposition of the interdiction and notice to show cause per the letter dated 20.11.2023 which stated that severe disciplinary action was contemplated that may lead to dismissal on account of gross misconduct in view of the allegation, “Exposing to risk of cess or actual loss of Kshs.13,556,364.00 on land rate adjustments in Kiambu County.” He was to make a presentation in 7 days. A further show cause letter was dated 21.11.2023 upon same allegations. The applicant has requested for information by the internal memo of 21.11.2023 and responded on merits by memo of 27.11.2023. It appears to the Court that the disciplinary process is underway and it is not shown to be proceeding in an unlawful manner.
  - c. It is urged for the applicant that the respondents through the Governor have published his interdiction and dismissal and it is therefore a predetermined outcome. However, the [County Governments Act](#) appears to offer a remedy for any procedural lamentations as follows per section 75,  
  
“If it comes to the attention of the County Public Service Board that there is reason to believe that any process or decision under this Part may have occurred in an irregular or fraudulent manner, the County Public Service Board shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the County Public Service Board may—
    - (a) revoke the decision;
    - (b) direct the concerned head of department or lawful authority to commence the process afresh; or,
    - (c) take any corrective action including disciplinary action.  - d. Again, section 77 of the Act provides that any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against the decision. The Court considers that the applicant has such statutory avenues to pursue.



- e. Accordingly, the application is amenable to dismissal. The parties are in continuing employment relationship, the disciplinary case is pending, and, each will bear own costs of the proceedings.
  - f. The Court has warned itself not to delve into the
7. In view of the foregoing findings, the Court needs not decide the application for the respondents dated 03.09.2024 seeking dismissal of the applicant's case on account of certain failures to comply with the directions of the Court. As urged for the applicant, the substantive justice of the case has been given priority. The application is determined with each party bearing own costs, accordingly.

In conclusion the application for judicial review dated 07.10.2024 and for dismissal of the matter dated 03.09.2024 are both hereby dismissed and each party to bear own costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 7<sup>TH</sup> MARCH, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

