



**Hassan v County Government of Wajir & another (Cause  
513 of 2019) [2025] KEELRC 1120 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1120 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 513 OF 2019  
S RADIDO, J  
APRIL 8, 2025**

**BETWEEN**

**ABDI OSMAN HASSAN ..... CLAIMANT**

**AND**

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

**WAJIR COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Abdi Osman Hassan (the Claimant) sued the County Government of Wajir and the County Public Service Board Wajir (the Respondents) on 7 August 2019, and he stated the Issues in dispute as:
  - (a) Unfair and unlawful withholding of salary.
  - (b) Non-payment of employee dues and accrued rights.
  - (c) Compensation for wrongful and unlawful action.
2. On 25 November 2024, the Respondents filed a Notice of Preliminary Objection, together with submissions contending that:
  - i. The Claimant's suit offends the provisions of section 9(2) of the *Fair Administrative Action Act* because the Claimant has failed to exhaust all remedies in view of the doctrine of exhaustion of internal dispute resolution mechanisms available under the provisions of the *Public Service Commission Act* as read together with the provisions of the *Employment and Labour Relations Court Act* before filing his claim to this Honourable Court.
  - ii. Before this bringing his claim, the Claimant has failed to invoke and exhaust the following statutory mechanisms and legal remedies for dispute resolution provided under section 77 of



the County Government Act and sections 59, 60, 71, 74(1), 75(1) and 87(2) of the Public Service Commission Act.

- iii. The 1<sup>st</sup> Respondent is a County Government established under Article 176 of the Constitution and the Claimant's service at the 1<sup>st</sup> Respondent is within the meaning of public service as provided under Article 232(2)(b), 233, 234 and 260 of the Constitution and section 2 of the Public Service Commission Act.
  - iv. In respect to matters touching on inter alia disputes arising from alleged withholding of salary, non-payment of employee dues and accrued rights and wrongful and unlawful action against the Claimant as a public officer, the Public Service Commission is the appellate Court. The ELRC does not have jurisdiction and determine disputes relating to exercise of disciplinary control of public officers in the first instance, as it is not the Court of first call.
  - v. Consequently, this Court lacks jurisdiction to hear and determine the Claimant's Statement of Claim dated 7<sup>th</sup> August 2019, and the same should be struck out with costs for being an abuse of the court process.
3. When the parties appeared in Court on 12 March 2025, the Court directed the Claimant to file and serve his submissions before 28 March 2025. The Claimant did not file the submissions.
  4. The Court has considered the Statement of Claim, Notice of Preliminary Objection and submissions.
  5. The Ethics and Anti-Corruption Commission wrote to the Respondents on 6 February 2019 advising that its investigations had established that the Claimant had used falsified documents to secure employment as a Chief Officer. The Commission advised the Respondents to take administrative action against the Claimant.
  6. Upon receipt of the letter from the Commission, the County Public Service Board wrote to the Governor on 11 February 2019, advising him to terminate the Claimant's contract.
  7. On 13 February 2018, the County Government notified the Claimant of the stoppage of his salary and the reason given was that investigations by the Ethics and Anti-Corruption Commission had established that he had presented falsified documents to secure employment as a Chief Officer. The notice informed the Claimant of contemplated disciplinary action, including termination of employment.
  8. The same day, the Governor notified the Claimant of the termination of his employment.
  9. The Claimant thereafter moved the Court alleging breach of contract. The action was prompted by a decision taken by the Respondents.
  10. Section 77 of the County Governments Act is in the following terms:
    77. Appeals to the Public Service Commission
      - (1) 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.
      - (2) The Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of—
        - (a) recruitment, selection, appointment and qualifications attached to any office;



- (b) remuneration and terms and conditions of service;
- (c) disciplinary control;
- (d) national values and principles of governance, under Article 10, and values and principles of public service under Article 232 of the Constitution;
- (e) retirement and other removal from service;
- (f) pension benefits, gratuity and any other terminal benefits; or
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.

(3) An appeal under subsection (1) shall be in writing and made within ninety days after the date of the decision, but the Commission may entertain an appeal later if, in the opinion of the Commission, the circumstances warrant it.

11. In terms of section 77(1) and (2)(b)(c) & (g) of the County Governments Act, the Claimant ought to have appealed to the Public Service Commission against the decision to stop his salary. He did not.

12. The aforesaid provision of law is complemented with section 87(2) of the Public Service Commission Act, which provides that:

A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.

13. The subsection prohibits legal proceedings in Court before the exhaustion of the appellate process.

14. The appellate jurisdiction of the Public Service Commission is anchored in Article 234(2)(i) of the Constitution.

15. The appellate jurisdiction has been accepted by the Court of Appeal in Secretary, County Public Service Board & Ar v Hulbhai Gedi Abdille (2017) eKLR.

16. The Claimant did not follow the appellate process set out in the applicable statutes. He did not demonstrate any exceptional circumstances which warranted him bypassing the said appellate process, or that the remedies available under the process were not available or effective.

17. The Court finds merit in the Notice of Preliminary Objection.

### Orders

18. The Notice of Preliminary Objection dated 25 November 2024 is upheld with the consequence that the Cause is struck out with costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAKURU ON THIS 8<sup>TH</sup> DAY OF APRIL 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Paul Musungu & Co. Advocates



For Respondents Harry & Associates Advocates  
Court Assistant Wangu

