



**Kenya County Government Workers' Union v Taita Taveta County Government & another (Cause E031 of 2025) [2025] KEELRC 1956 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1956 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E031 OF 2025**

**M MBARŪ, J  
JUNE 30, 2025**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS' UNION ..... CLAIMANT**

**AND**

**TAITA TAVETA COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

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

**RULING**

1. The respondents, Taita Taveta County Government and Taita Taveta County Public Service Board, filed a Notice of Preliminary Objections dated 2 April 2025, challenging the claimant's claim and application dated 17 March 2025.
2. The objections are that the claim and application are legally flawed and breach the doctrine and principle of exhaustion of alternative remedies. The court lacks jurisdiction because the claim and application contravene Article 234(2) (i) of the *Constitution*, Section 77 of the County Government Act, and Section 87(2) of the *Public Service Commission Act*. The claim should be dismissed with costs.
3. Both parties attended and consented to resolve the objections through written submissions.
4. The respondents submitted that preliminary objections can be raised at any time where there is a question of law arising from the pleadings and, if argued, may dispose of the suit as held in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA.
5. The claimant filed the claim together with an application seeking various remedies, including a declaration that the stoppage of payment of salary to Chalambo Yassin is unfair and should be compensated with 12 months' pay. That there is a breach of constitutional right to fair labour practices and damages should be paid, along with an order restraining the respondents from stopping him from discharging his duties and an order of certiorari quashing the decision via letter dated 18



- November 2024 re-deploying Chalambo Yassin to the Youth, Sports, Gender, Culture and Social Services Development Department of the Taveta Sub-county Revenue Office to perform duties for which he is neither qualified nor has the expertise.
6. The respondents submitted that the claim is based on the argument that the constant transfers of the grievant amounted to unfair labour practices. They also stated that the grievant is being discriminated against through mistreatment, harassment, and victimisation.
  7. There are internal and prescribed procedures for redress of such grievances, and the claimant has failed to exhaust them. In the case of *Speaker of the National Assembly v Karume* [2008] eKLR, the court held that where there are clear procedures for redress of any grievance, these should be exhausted. This position is reiterated in the case of *Godfrey Muthinji & another v Samuel Muguna Henry & 1756 others* [2015] eKLR, that where a dispute resolution mechanism exists outside courts, it should be exhausted before the jurisdiction of the court is invoked.
  8. Article 234(2) (i) of the *Constitution* mandates the Public Service Commission to hear appeals regarding county governments' public service. Section 77 of the County Government Act states that a person who is dissatisfied with a decision of the County Public Service Board may appeal to the Public Service Commission. Such matters should relate to recruitment, remuneration, retirement, removal from office, and any other decisions of the County Public Service Board.
  9. Section 87(2) of the *Public Service Commission Act* states that individuals cannot initiate legal proceedings in any court concerning matters within the jurisdiction of the Commission. In this case, if the grievant is dissatisfied with the respondents' decision, they must first exhaust the available dispute resolution mechanisms before turning to court. In the case of *Secretary, County Public Service Board & Another v Hulbhai Gedi Abdille* [2017] eKLR, the court held that when there are other sufficient and adequate channels or forums to resolve a dispute, those should be exhausted before approaching the court. Unless exceptional circumstances require constitutional interpretation, alternative dispute resolution mechanisms should be used, as held in *Republic v Migori County Secretary & another; Migori County Public Service Board (Interested party); Ngwala & 8 others (Ex-parte applicants)* (Judicial Review Application E013 of 2022).
  10. In this case, the claimant has failed to comply with the *Constitution* under Article 234(2), section 77 of the County Government Act, and Section 87 of the *Public Service Commission Act*. The claim should be dismissed with costs.
  11. In reply, the claimant submitted that, indeed, where there is an alternative dispute resolution mechanism outside court, it should be exhausted, except where the claim is based on exceptions to the exhaustion doctrine. Due to the public interests and constitutional nature of the issues raised and the remedies sought, the Public Service Commission is not the most appropriate, sufficient, or suitable forum for addressing these issues. In the case of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (interested parties)* [2020] eKLR, the court held that there are several exceptions to the doctrine of exhaustion. Such a doctrine would not apply where the court is required to interpret constitutional provisions, and the statutory provisions that exclude the court's jurisdiction must be interpreted restrictively.
  12. The claimant argued that, given the nature of the claim, the PSC would not be able to determine the issues raised. An order of Certiorari sought in the claim can only be issued by the court. Rule 10 of the Employment and Labour Relations Court (Procedure) Rules allows a party to file a claim and seek to enforce constitutional and judicial review orders. The jurisdiction of the court, as mandated by Section 12 of the *Employment and Labour Relations Court Act*, requires the court to issue orders



of judicial review and remedy constitutional violations through the award of general damages. Such orders cannot be issued by the PSC as alleged.

13. In the case of *Abdikadir Suleiman v County Government of Isiolo & another* [2015] eKLR, the employee was unfairly dismissed, and he claimed there were constitutional violations. The court addressed this and held that the provisions of Section 77 of the County Government Act did not restrict the court's jurisdiction.
14. In this case, the respondents filed a response to the claim but failed to raise any objections regarding the failure to address the doctrine of exhaustion. The objections are a mere afterthought and should be dismissed with costs to allow the claimant to proceed on the merits of the claim.

### **Determination**

15. In the memorandum of claim, the claimant, who represents the grievant, Chalambo Yassin, has noted that the issues in dispute relate to the unlawful suspension of salary, wrongful removal from the payroll, unfair labour practices, constructive dismissal, harassment, and the violation of constitutional rights.
16. The objections are that the court lacks jurisdiction because the claimant has failed to address the doctrine of exhaustion. Under Article 234(2) (i) of the *Constitution*, Section 77 of the County Government Act, and Section 87(2) of the *Public Service Commission Act*, any grievance arising from the decision of the 2nd respondent must be addressed to the PSC before a party can approach the court.
17. The doctrine of exhaustion is addressed in the case of *Nyaoga v Chairman Kisii County Assembly & 3 Others* [2023] KECA 1540 (KLR), where the court held that,

The doctrine of exhaustion of remedies was created by courts in order to promote an efficient justice system and autonomous administrative state. It is a principle that requires parties to exhaust all available local administrative remedies before seeking redress in a court of law on a constitutional issue. An aggrieved party must first pursue all avenues of relief found within the administrative agency responsible for the issue at hand. The reason for this is to allow administrative agencies to address and to potentially resolve the issue before escalating the same to the courts.

18. in *William Odhiambo Kamogo & 3 Others V Attorney General & 4 Others* [2020] eKLR, the Court of Appeal stated:

The question of exhaustion of administrative remedies arises when a litigant aggrieved by an agency's action seeks redress from a court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure a party is, first of all, diligent in the protection of his own interest within the mechanism in place for resolution outside the courts.

Inherently, therefore, the issue in dispute must come to the fore.

19. In this case, the grievant challenges the respondents' transfer of him, the stoppage of his salary, and his removal from the payroll. He claims that there was constructive dismissal and unfair labour practices. In the remedies sought, the claimant is seeking that the letter dated 18 November 2024 replying to the grievant be quashed.
20. The claim and the orders sought are inconsistent. On the one hand, the claimant is challenging the re-deployment of the grievant, while on the other hand, claiming there is constructive dismissal.



21. At the core of the matter is the re-deployment of the grievant. This is a matter that ought to be addressed by the respondents through the internal dispute resolution mechanisms as outlined by the respondents. Section 77 of the County Government Act must be read in conjunction with Section 87(2) of the Public Service Commission Act as well as Article 234(2) (i) of the Constitution. It is imperative that the court should allow parties to exhaust the internal dispute resolution mechanisms available at the shop floor and to ensure that, where there are statutory provisions calling for such exhaustion, they should be addressed before invoking the court's jurisdiction.
22. In *Mutanga Tea and Coffee Company v Shikara Ltd & Another* [2015] eKLR, it was emphasised that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. However, courts retain residual jurisdiction to intervene as an exception to the doctrine of exhaustion, where the action complained of falls within the exceptions to the doctrine as held in *Chief Justice and President of the Supreme Court and Another v Bryan Madila Khaemba* [2021] eKLR.
23. In this case, the core issue in dispute is the redeployment of the grievant, as stated in the letter dated 18 November 2024. Such matter falls within the purview of the 2nd respondent under section 77 of the County Government Act, and where the grievant is aggrieved, the PSC has the authority to hear the appeal.
24. Whereas the court has broad jurisdiction under Article 162(2) (a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act to hear and determine constitutional violations, such jurisdiction must be understood in context, as held in *Daniel N. Mugendi v Kenyatta University & 3 Others* [2013] eKLR. When the grievant, as an employee, seeks to address a case of redeployment, the primary forum for his complaint is not the court.
25. Therefore, having addressed the objections by the respondents, the claim herein is premature. The suit is struck out. Each party is to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF JUNE 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

