



**Islam & another v County Secretary – Lamu County & 2 others (Miscellaneous Application E007 & E008 of 2025 (Consolidated)) [2025] KEELRC 1848 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1848 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
MISCELLANEOUS APPLICATION E007 & E008 OF 2025 (CONSOLIDATED)**

**M MBARŪ, J**

**JUNE 23, 2025**

**BETWEEN**

**ABDILLAHI MOHAMED ISLAM ..... 1<sup>ST</sup> APPLICANT**

**FARHAD ALI SHEE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**COUNTY SECRETARY – LAMU COUNTY ..... 1<sup>ST</sup> RESPONDENT**

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

**COUNTY GOVERNMENT OF LAMU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The matters in Malindi Misc. Application Nos. E007 and E008 of 2025 are hereby consolidated for hearing and determination as they arise from similar facts and affect the same respondents. The lead file is Malindi Misc. Application No. E007 of 2025, and the orders hereof shall apply to both files.

The applicant filed an application dated 3 March 2025 seeking orders;

- a. Spent.
- b. The decision of the Public Service Commission made on 13 March 2024, reinstating the applicant into service and paying his withheld salaries, allowances, and other benefits, be recognized, adopted, and enforced as a judgment of the court, and a decree be issued in terms of the decision of the Commission.
- c. The applicant will be awarded the costs of the application and the appeal lodged before the Public Service Commission.

2. The applicant supports the application through his Affidavit and avers that in 2020, he was appointed as a Coxswain by the 3<sup>rd</sup> respondent through a letter of appointment dated 16 April 2020. Before the



- contract expired, it was renewed for another year, and the terms of service changed from temporary to permanent and pensionable with effect from 1 July 2021.
3. The applicant avers that despite his employment, he was arbitrarily removed from office without notice or hearing and removed from the payroll, which resulted in unfair labour practices.
  4. Aggrieved by the respondents' decision, the applicant appealed to the Public Service Commission (PSC), which was heard and determined in his favour. The PSC ordered the applicant reinstated to his position with payment of his withheld salaries, allowances, and other benefits. The respondents were allowed the right of appeal within 6 months, but none were filed or reviewed.
  5. The applicant notified the respondents of the PSC decision, yet they have refused to comply. There is no explanation for the failure, despite the PSC decision being binding upon the respondent in the absence of an appeal or application for review.
  6. The applicant avers that the application is filed to have the court adopt the PSC decision under section 89 of the PSC Act and enforce it through issuing a decree. The respondents' compliance with the PSC decision militates against the applicant's rights to fair labour practices and other employment rights.
  7. In reply, the 1st and 3rd respondents filed the Replying Affidavit of Amb. Ali Abbas Ali, County Secretary and Head of Public Service of the County Government of Lamu. He avers that the respondents are aware that the applicant filed an appeal to the PSC challenging the decision to remove him from the payroll of the 3rd respondent. The PSC rendered its decision on 13 March 2024 and directed the reinstatement to the payroll system without losing salary, allowances, and benefits for the period the applicant was not paid. However, despite the best efforts to ensure compliance with the decision, it has not been possible to reinstate the applicant as the position above has already been filled. The respondents have exceeded the statutory maximum limit of 35% of total revenue regarding recurrent expenditure, per the Auditor General's report on the 3rd respondent for the financial year 2023-2024.
  8. Amb. Ali Abbas Ali avers that due to legal impediments and financial constraints, the respondents have yet to reinstate the applicant for fear of further bloating the wage bill. The 1st and 3rd respondents have not refused to comply with the directive of the PSC. Nevertheless, they are endeavoring to restructure their workforce to reduce the wage bill in compliance with Section 107(2)(c) of the Public Finance Management Act and Regulation 25(1)(a) and (b) of the Public Finance Management (County Governments) Regulations before the applicant's admission to the payroll system.
  9. To avoid contravention of the law, the respondents seek the court to substitute the decision by PSC with remedies for wrongful and unfair termination provided under section 49 of the Employment Act. This will meet the ends of justice, and the applicant will not suffer prejudice.
  10. Parties attended and made oral submissions in court, reiterating the affidavits.

### **Determination**

11. It is a common cause that the third respondent employed the applicant through a letter dated 16 April 2020. His employment was made permanent and pensionable with effect from 1 July 2021.
12. It is also not contested that the respondents removed the applicant from the payroll without due process, affecting his employment and leading to his appeal to the PSC. The matter was heard and determined on 13 March 2024 in favour of the applicant. The PSC directed the respondents to reinstate the applicant to the payroll and pay withheld salaries, allowances, and other benefits.



13. The respondents have not complied and, in reply to the instant application, are seeking the court to substitute the PSC decision with remedies under section 49 of the *Employment Act* regarding wrongful termination of employment.
14. The respondents admit that there is no appeal against the PSC decision of 13 March 2024.
15. In this regard, section 89 of the Public Service Commission is instructive. It provides,
  - 1) Any person who is affected by the decision of the Commission made under this part may file the decision for enforcement by the Employment and Labour Relations Court, provided for under Article 162(2)(a) of *the Constitution*.
  - (2) Any person who refuses, fails or neglects to implement the Commission's decision is liable to disciplinary action in accordance with the applicable laws, including removal from office.
16. The court's role at this juncture is not to discover or address facts. Its duty is confined to enforcing the PSC decision. If the respondents wished to substitute the PSC decision, an appeal or a review was permitted within six months of the decision, as held in *Wambugu v County Government of Nairobi & another* [2025] KEELRC 917 (KLR).
17. Under section 89(2) of the PSC Act, the respondents' failure to comply with the PSC decision exposes the line officers and other individuals to punishment. See *Murimi v County Government of Kirinyaga & another; Public Service Commission (Interested Party)* [2024] KEELRC 2194 (KLR)
18. In this case, the court is bound under section 89 of the PSC Act. The respondents' refusal and failure to enforce the PSC decision under the guise of being bound under the *Public Finance Management Act* and the Regulations thereto should have been addressed with the PSC, which they failed to do through an appeal or an application for review.
19. Failure to abide by the lawful decisions issued by the PSC on 13 March 2024, perpetuates unfair labour practices against the applicant. Removing the applicant from the payroll has already been addressed with finality, and there is no pending appeal or review. The respondents are bound.

This will suffice.
20. Accordingly, in line with the provisions of section 89 of the *Public Service Commission Act*, the decision of the Public Service Commission dated 13 March 2024 is hereby adopted as the court's Order. A decree shall be drawn as per the decision thereof. The applicant is awarded costs.
21. The orders hereof shall apply to Malindi Misc. Application E008 of 2025 on the Public Service Commission decision dated 21 March 2024, which is hereby adopted as the Order of the Court, and a decree shall be issued in terms of the decision thereof.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 23 DAY OF JUNE 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

