



Nyamira County Public Service Board & 2 others v Mageto (Appeal E001 of 2025) [2025] KEELRC 1753 (KLR) (17 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1753 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
APPEAL E001 OF 2025
NZIOKI WA MAKAU, J
JUNE 17, 2025**

BETWEEN

**NYAMIRA COUNTY PUBLIC SERVICE BOARD 1ST APPELLANT
DIRECTOR H/UMAN RESOURCE MANAGEMENT 2ND APPELLANT
PAYROLL MANAGER 3RD APPELLANT**

AND

BOLYCUP KENGOCHA MAGETO RESPONDENT

(Being an appeal from the Ruling and Orders of Honourable W.K. Chepseba (C.M.) delivered on 29th October 2024 in Nyamira MCELRC Claim No. E005 of 2022)

JUDGMENT

1. Via a statement of claim dated 24th May 2022 and filed on 26th May 2022, Bolycup Kengocha Mageto (the Respondent) filed suit before the Magistrate's Court at Nyamira against the Nyamira Public Service Board and the Nyamira County Government (the Appellants), seeking various reliefs arising from what he alleged to be his unlawful termination of employment.
2. Subsequently, on the 9th of January 2024, the Appellants raised a preliminary objection to the suit, arguing that the court lacked jurisdiction due to non-compliance with the exhaustion doctrine. They contended that the Respondent had failed to exhaust the mandatory appellate procedures provided under Article 234(2)(i) of *the Constitution*, section 77 of the *County Governments Act*, and sections 85, 86, and 87(2) of the *Public Service Commission Act*—all of which require that employment disputes arising within the County Public Service be addressed through the statutorily prescribed mechanisms before being escalated to court.



3. Through a Ruling dated 29th July 2024, the Magistrate dismissed the Preliminary Objection, holding that the denial of the Respondent's salary amounted to an unfair labour practice, which the court had jurisdiction to handle.
4. Dissatisfied with this ruling, the Appellants sought and were granted leave to appeal on 29th October 2025. They subsequently filed a memorandum of appeal with this court contending that:
 - i. The trial Magistrate erred in law by failing to recognize that the suit involved employment claims within the County Government, whose filing in court contravened the mandatory provisions of section 87(2) of the *Public Service Commission Act*;
 - ii. The Magistrate substantially misapprehended the nature and substance of the Respondent's claim in relation to Article 234(2)(i) of *the Constitution*, sections 85, 86, and 87(2) of the *Public Service Commission Act*, and section 77 of the *County Governments Act*;
 - iii. The learned trial Magistrate's failed to properly address his mind to and misapprehended in substantial material respects the meaning and import of Article 234(2)(I) of *the Constitution*; sections 85, 86 and 87(2) of the *Public Service Commission Act*; and section 77 of the *County Governments Act* vis-à-vis the scope of his jurisdictional competence and authority;
 - iv. The ruling was per incuriam as it was based on reasoning that is non-cognisant of and irreconcilably inconsistent with meaning and import of Article 234(2)(I) of *the Constitution*; sections 85, 86 and 87(2) of the *Public Service Commission Act*; and section 77 of the *County Governments Act*;
 - v. The decision to uphold a suit expressly barred under section 87(2) of the *Public Service Commission Act* was legally untenable under section 3 of the *Judicature Act*;
 - vi. The ruling was per incuriam as the Trial Court arrogated itself jurisdiction which it did not have pursuant to the express provisions of Article 234(2)(I) of *the Constitution*; sections 85, 86 and 87(2) of the *Public Service Commission Act*; and section 77 of the *County Governments Act*;
 - vii. The ruling and orders issued were inconsistent with the fundamental legal doctrine of exhaustion;
 - viii. The ruling and orders were further inconsistent with the doctrine of stare decisis.
5. On the basis of the above grounds, the Appellants sought to have the preliminary objection upheld, the Respondent's suit struck out with costs, and the Magistrate's ruling set aside. They also prayed for the costs of the appeal.
6. Following the Court's directions issued on 19th May 2025, the appeal was canvassed by way of written submissions.

Appellants' Submissions

7. The Appellants framed the sole issue for determination as whether the trial court had jurisdiction to entertain the claim in light of section 87(2) of the *Public Service Commission Act*. They asserted that all employment disputes emanating from the County Government Public Service must first be referred to the Public Service Commission by way of appeal, hence the trial court lacked jurisdiction to hear and determine the matter. Emphasizing the centrality of jurisdiction to the legitimacy of judicial proceedings, the Appellants cited the Supreme Court decision in Samuel Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, where it was held that a court's jurisdiction flows from *the Constitution*, legislation, or both, and that a court cannot assume



jurisdiction beyond that which is conferred by law. In support of their position, the Appellants referred to the Respondent's memorandum of claim, which clearly indicated that the claim arose from his employment with the Nyamira County Government. They further cited Article 234(2) (i) of *the Constitution*, which mandates the Public Service Commission to hear and determine appeals concerning County Government Public Service. They also relied on section 77 of the *County Governments Act*, which provides for appeals from decisions of County Public Service Boards to the Public Service Commission, as well as sections 85 and 87(2) of the *Public Service Commission Act*, which empower the Commission to hear appeals from County Governments and bar the institution of court proceedings before the appeal process is exhausted respectively.

8. The Appellants also relied on the decision of the Court of Appeal in *Speaker of the National Assembly v Karume* (Civil Application 92 of 1992) [1992] KECA 42 (KLR) (29 May 1992), where the Court held:

“Where there is a clear procedure for the redress of any particular grievance prescribed by law or an Act of Parliament, that procedure should be strictly followed.”

9. Additionally, they cited the case of *Secretary County Public Service Board & another v Hulbhai Gedi Abdille* [2017] eKLR, where the Court emphasized the necessity of exhausting alternative and adequate forums for dispute resolution before invoking the court's jurisdiction. In further support of their appeal, the Appellants referred to several similar matters in which courts declined jurisdiction due to the parties' failure to comply with the doctrine of exhaustion. Amongst them that of *Nicodemus Akumu Nyangeri & 7 others v County Government of Kisii & another* [2021] eKLR, where the court, relying on the *Hulbhai Gedi Abdille* decision, held that it lacked jurisdiction at the first instance to entertain claims by individuals aggrieved by decisions of County Public Service Boards acting within their mandate. Finally, the Appellants urged the court to disregard the Respondent's contention that the Magistrates' Court has jurisdiction to determine questions of constitutional infringement, asserting that this argument was without legal foundation. Consequently, they urged the Court to allow the appeal as prayed.

Respondent's Submissions

10. On his part the Respondent urged the court to be guided by its role on a first appeal, which is to re-evaluate and re-analyse the extracts on record to determine whether the Learned Magistrate's conclusions should stand or not, and give reasons either way, based on *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] KECA 208 (KLR).
11. The Respondent submitted that the Employment and Labour Relations Court (ELRC) possesses unfettered jurisdiction to hear and determine employment disputes. He contended that the doctrine of exhaustion does not oust the court's jurisdiction but merely postpones its exercise. To support this argument, he cited the case of *Mohumed v Wajir County Assembly Service Board (Cause E094 of 2023)* [2024], where the court held that section 29 of the ELRC Act—empowering the Chief Justice to appoint magistrates to hear claims involving salaries below Kshs 80,000—did not divest the ELRC of its jurisdiction. He also relied on *Abdikadir Suleiman v County of Isiolo & another* [2015] eKLR, where it was held that statutory provisions providing for alternative dispute resolution mechanisms do not extinguish the court's jurisdiction but only hold it in abeyance while such mechanisms are pursued. To further support the position that the Magistrate's Court has jurisdiction, the Respondent submitted that the exhaustion doctrine, as referenced by the Appellants, was inapplicable in the present circumstances. He asserted that the statutory provisions could only be invoked where a dispute had been first lodged with the County Public Service Board and an appeal was contemplated. Since no



such dispute had been referred to the Board in this case, he maintained that the relevant provisions were not triggered, rendering the Preliminary Objection premature. He also asserted that the suit was a fresh claim, not an appeal, and therefore appellate procedures were irrelevant. Lastly, he emphasized that the County Public Service Board's jurisdiction was limited to wage-related disputes, whereas the matter at hand concerned unfair labour practices. In light of the foregoing, the Respondent urged the court to dismiss the appeal with costs.

Disposition

12. The Appellants have raised two issues which fall for determination. The first is whether the exhaustion doctrine is applicable to this instant case. The second issue is whether the Magistrate's Court has jurisdiction to hear and determine claims for compensation for loss or damage suffered due to violation or denial of fundamental rights.
13. The first issue is the exhaustion doctrine. The Appellants asserted that the doctrine of exhaustion is applicable in the suit precipitating the appeal as contemplated under Article 234(2)(i) of *the Constitution* read together with section 77 of the *County Governments Act* and sections 85, 86, and 87(2) of the *Public Service Commission Act*. The Appellants also rejected the Respondent's argument that section 87(2) applies only to disciplinary matters, contending that such an interpretation is erroneous and unsupported by law. The Appellants thus argued that section 87(2) could not be circumvented by clever interpretation or deliberate misreading. In support of arguments relating to the issue of exhaustion, the Appellants cited the case of *Nicodemus Akumu Nyangeri & 7 others v County Government of Kisii & another* (supra) where the court, citing with approval the case of *Secretary County Public Service Board and Another v Hulbhai Gedi Abdille* [2017] eKLR and held that it lacked jurisdiction at the first instance to entertain claims by individuals aggrieved by decisions of County Public Service Boards acting within their mandate.
14. In the case of *Secretary County Public Service Board and Another v Hulbhai Gedi Abdille* [2017] KECA 643 (KLR), the Court of Appeal allowed the appeal on the basis that the Respondent had failed to utilize the process provided under section 77 of the *County Governments Act* by filing a judicial Review application to the High Court and stated thus:-

"There is no doubt that the respondent initiated the judicial review proceedings in utter disregard of the dispute resolution mechanism availed by section 77 of the Act. The section provides not only a forum through which the respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one, specifically tailored by the legislators to meet needs such as the respondent's."

[Emphasis provided]
15. The principle of exhaustion of remedies commonly referred to as the exhaustion doctrine, requires a party to first utilize or exhaust all available non-judicial remedies before seeking court intervention. This is especially so where there are statutory instruments providing for the same. The Court is minded that though the available alternative dispute resolution mechanisms are availed, it is not always the case that one must utilise them before resorting to court. There are exceptional instances where the intervention of the Court can be availed because the exhaustion doctrine does not deny courts their jurisdiction. In the case before the Learned Magistrate, the matters could have been articulated as the process for an appeal to the Public Service Commission or the County Public Service Board had not been triggered. As such, on the first issue I find and hold that the Learned Magistrate did not fall in error by rejecting the argument on the exhaustion doctrine.



16. This brings us to the second issue which is that the Learned Magistrate did not have jurisdiction to hear the matter as it sought remedies that the Learned Magistrate could not grant by dint of absence of jurisdiction to hear and determine claims for compensation for loss or damage suffered due to violation or denial of fundamental rights. The Magistrate's Court Act under section 8(3) limits the jurisdiction of the said Court from granting compensation for loss or damage suffered in consequence of violation of constitutional rights such as claimed in the suit. The section provides thus:-

8.

(3) Nothing in this Act may be construed as conferring jurisdiction on a magistrate's court to hear and determine claims for compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedom in the Bill of Rights.

17. The Respondent had sought the grant of remedies that were beyond the scope of the Learned Magistrate in prayer no. 24(a) of the claim which raised constitutional issues which fell outside the jurisdictional mandate of the Magistrate's Court, contrary to section 8 of the Magistrates' Courts Act, 2015. This Court finds and holds that on that score, the Learned Magistrate fell in error and ought to have declared that the said Court had no jurisdiction to handle the claim as presented. This Appeal therefore succeeds to that extent. The preliminary objection should have been upheld as the claim presented by the Respondent was couched in a manner that divested the Learned Magistrate of jurisdiction despite the issue of deprivation of salaries being one within the scope and competence of the Magistrate's Court. The appeal is allowed and the Appellant will have costs at the Magistrates Court only.

Orders accordingly.

DATED AND DELIVERED AT KISII THIS 17TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

