



**Republic v Tharaka Nithi County Public Service Board & another; Nicholas (Ex parte Applicant)
(Judicial Review E004 of 2024) [2025] KEELRC 2053 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2053 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
JUDICIAL REVIEW E004 OF 2024**

ON MAKAU, J

JULY 11, 2025

**IN THE MATTER OF: ARTICLES 1, 2, 10, 22, 23, 35, 40, 47, 48, 50, 73,
75, 155, 159, 161, 162 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF: THARAKA NITHI COUNTY GOVERNEMENT

AND

IN THE MATTER OF: THE PUBLIC SERVICE COMMISSION ACT, 2017

AND

**IN THE MATTER OF: MWONGOZO, THE CODE OF
GOVERNANCE FOR STATE CORPORATIONS, JANUARY, 2015.**

AND

IN THE MATTER OF: THE DOCTRINE OF THE LEGITIMATE EXPECTATIONS

AND

IN THE MATTER OF: THE FAIR AND ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

REPUBLIC APPLICANT

AND

THARAKA NITHI COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

AND



JUDGMENT

Introduction

1. This case arose from termination of the applicant's employment by the 1st respondent. The applicant appealed against the termination before the 2nd Respondent but the termination was upheld. However, the applicant was awarded compensatory damages equaling to 12 months gross salary for irregular and illegal redeployment, and re-designation. He was further allowed the benefit of pension.
2. The applicant being aggrieved by the decision, sought and obtained leave to institute judicial review proceedings against the two respondents herein. The leave was granted on 22nd May 2024 and he filed the Notice of Motion dated 24th May 2025 seeking the following reliefs: -
 - a. That an order of certiorari be granted and is hereby granted to quash the 2nd Respondent's decision dated 21st February 2024 to the extent that it purported to uphold the 1st Respondent's decision to terminate the services of the Ex-parte Applicant, Lawrence Mutembei Nicholas P/No.20XXXX as an employee of Tharaka Nithi County hereof.
 - b. That an order of Mandamus be and is hereby granted compelling the 1st Respondent, to forthwith reinstate the Ex-parte Applicant, Lawrence Mutembei Nicholas P/No.20XXXX; to his rightful previous position as Director Supply Chain Management [Job Group 'R'] of Tharaka Nithi County; and pay twelve [12] month's salary as compensation for irregular and illegal re-deployment and re-designation within 14 days from the date hereof.
 - c. That an order of Prohibition to prevent the Respondents from implementing the 1st Respondent's decision dated 21st February, 2024 upholding termination of the services of the Ex-parte Applicant, Lawrence Mutembei Nicholas P/No.20XXXX thereof.
 - d. That the costs of the application be borne by the Respondent.
3. The motion is supported by the applicant's Affidavit sworn on 24th May 2024, plus statement of fact and verifying Affidavit all dated 14th May 2024 which accompanied the application for leave.
4. The 1st Respondent filed a Notice of Preliminary Objection dated 25th June 2024 and prosecuted it. However, by a ruling delivered on 26th March 2025, the objection was dismissed with costs. Subsequently, the 1st Respondent filed a Replying Affidavit opposing the Motion herein while the 2nd Respondent filed Grounds of Opposition to the motion.

Factual Background

5. The applicant's case is that he has the training, skills and experience on matters procurement. On 15th May 2008, he was appointed as Senior Procurement Officer by the Judicial Service Commission and worked until 25th June 2012 when he was appointed the Principal Procurement Officer by the National Water Conservation & Pipeline Corporation. Subsequently, he was headhunted and seconded to Tharaka Nithi County Government where on 15th December 2017 he was employed as the Director Supply Chain Management [Job Group R].
6. On 24th February 2020, he received a letter deploying him from his Department of Finance and Economic Planning [Procurement Unit] to the Department of Education, Youth, Vocational training,



- Culture, Sports and Tourism as the Director for Culture. He reported to the new Department on 2nd March 2020 but he protested against redeployment vide his letter dated 9th March 2020 stating that he was not qualified for the new position because it was not within his training, skills and profession.
7. He contended that his protest letter elicited no response despite several reminders. In the meanwhile, Covid-19 struck and people were directed to work from home until the County Secretary issued a Memo dated 14th September 2020 requesting officers to resume work from their offices since the Covid-19 cases had decreased.
 8. The 1st respondent never responded to the applicant's protest letter and instead it served him with a show cause letter dated 6th October 2020 requiring him to explain why he was not reporting to work. The applicant wrote another protest letter dated 15th October 2020 stating that his redeployment was irregular, illegal, and unprocedurally done contrary to the rules and regulations of Public Service. Subsequently, his employment was terminated by a letter dated 22nd February 2021 by the 1st respondent on account of desertion.
 9. He contended that the termination was done without following proper disciplinary process as he never received any warning letter or proper notice for absenteeism or desertion of lawful duty before the termination. He contended that he continued to report for work but he had no office space after declining the unlawful redesignation. He maintained that the termination was unjust, unfair and illegal and therefore amenable to judicial review.
 10. He appealed to the 2nd respondent and the appeal was not heard until 7th February 2022 and a decision delivered on 21st February 2024. He faulted the decision by the Public Service Commission for failure to order reinstatement to employment despite having made a finding that his redeployment and redesignation was irregular and illegal and even awarding him compensation equaling to 12 months' salary.
 11. It is the applicant's case that the actions by the respondents violated Article 41, 47, 50, 73 and 75 of *the Constitution* and section 17 and 45 of the *Employment Act* and urged that the court has jurisdiction, under Article 23 of *the Constitution* to grant judicial review orders sought.
 12. He averred that on 13th June 2018, the 1st respondent had caused him to be maliciously arrested and charged by officers of EACC in Criminal case No.1 of 2018 [Chuka] but the case was finally terminated under section 202 of the *Criminal Procedure Code*. Subsequently, he filed a civil suit for malicious prosecution and it is still pending in court.
 13. The 1st respondent contended that the court has no jurisdiction over the matter herein pursuant to section 88 of the PSC Act as read with Regulation 24 of the PSC [County Appeals Procedure] Regulations, 2022 which provides for review of decision of the PSC within six [6] months from the date of such decision. It further averred that the applicant's case is premature as he brought it before exhausting internal review mechanism that is allowed within six [6] months from the date of the PSC's decision on the appeal.
 14. As regards the merits of the application, the 1st respondent averred that the termination of the applicant's employment was substantively and procedurally fair. It averred that the redeployment of the applicant from the Department of Finance & Economic Planning [Director Procurement Unit] to Director Culture [Department of Education, Youth, Vocational Training, Culture, Sports & Tourism] was lawful since section 72[2] of the *County Governments Act* [CGA] empowers the Head of County Public Service to redeploy a County Public Officer from one department to another without requiring their consent. It averred that, consent is only required in a case of redesignation under section 69[2] of the CGA [horizontal movement to a different cadre or grade].



15. It contended that the transfer of the applicant from Director Procurement Unit to Director of Culture on 24th February 2020 was a redeployment, not redesignation, and no consent was necessary. It further averred that the duties of the County Director of Culture as set out in the letter dated 5th March 2020, includes Management, Planning, Coordination and Administration of Culture and Arts.
16. It averred that the applicant holds a Bachelor of Art degree from Moi University which is aligned with requirements of the redeployed position. It averred that the applicant was more qualified for the Culture role than Procurement and as such the redeployment was substantively lawful under section 72[2] of the *County Governments Act*. That although the applicant holds a certificate in Supply Chain Management from the Government Training School, he is not registered as a full member of the Kenya Institute of Supply Management or any other equivalent professional body as required by section 47[1] and [2] of the Public Procurement and Assets Disposal Act, 2015.
17. The 1st respondent admitted that the applicant wrote on 9th March 2020 protesting the deployment for lack of skills but the protest was considered and rejected as the applicant held a BA qualification. He reported on duty on 28th February 2020 and on 4th March 2020 he applied for leave misrepresenting his job title but the form was neither recommended nor approved. From March 2020 to September 2020 all County staff worked remotely due to Covid-19 Pandemic.
18. The 1st respondent further averred that Biometric attendance records for March 2020 and September 2020 to February 2021 showed no attendance by the applicant despite the directive dated 14th September 2020 that staff resume work at the office. That the applicant admitted his absence in his letter dated 26th August 2020 and as such his prolonged absence without leave or justification amounted to gross misconduct warranting dismissal.
19. The 1st respondent averred that it served the applicant with show cause letter dated 6th October 2020 for absconding duty from March 2020 but his response dated 8th October 2020 did not rebut the allegation of absconding. He was then summoned by letter dated 3rd February 2021 to attend disciplinary hearing on 17th February 2021 before the County Human Resource Advisory Committee [CHRAC] and he attended. He never disputed the charge of absconding but raised deployment issues.
20. The 1st respondent averred that the instant motion improperly conflates redeployment under section 72 with redesignation under section 69 of *County Governments Act*, leading to an erroneous invocation of the consent requirement. It further averred that the applicant does not dispute the biometric records, the mis-described leave form, his admission of absence, or his failure to address absconding in his reply to the show cause letter.
21. He has also not tendered any fresh evidence or legal argument that justifies overturning the CHRAC's findings or the lawfulness of the termination. He has further not presented any material evidence or legal basis upon which decision by the PSC should be overturned.
22. The 2nd respondent opposed the motion on the following grounds: -
 - a. The order of certiorari is not tenable as the decision to dismiss the applicant was issued vide letter dated 21st February 2021 which is long than the statutory limitation period.
 - b. The prayer for reinstatement is bad in law in view of the meaning of section 90 of the *Employment Act*.
 - c. The application lacks merits as the PSC decision on the appeal by the applicant to the Commission was arrived at procedurally and fairly in that he was accorded a chance to prosecute the appeal, his representations were considered, the decision was rationally arrived



at after considering the facts and the law, and the decision was communicated to him, giving him the right to apply for review of the Commission's decision under section 88 of the PSC Act read with Regulation 24 of the PSC [County Appeal Procedures] Regulations, 2022.

- d. The motion is incurably defective and bad in law.
23. The applicant and the 1st respondent filed written submissions but the 2nd respondent did not file any. I have considered the pleadings and the written submissions. It is common ground that the applicant was employed by the 1st respondent and he was dismissed on 21st February 2021. It is also a fact that the applicant appealed to the PSC and his dismissal was upheld but he was awarded some compensatory damages for irregular deployment and illegal redesignation. He was given chance to seek review before the PSC within six [6] months but he did not and instead he brought this judicial review proceedings. The issue of jurisdiction and exhaustion of internal mechanism was determined in the ruling on 1st respondent's preliminary objection delivered on 26th March 2025 and therefore I will not revisit the same.

Issues for determination and analysis

24. The issues for determination are: -
- a. Whether the prayer for certiorari is untenable due to limitation period.
 - b. Whether the prayer for reinstatement is bad in law by the dint of section 90 of the [Employment Act](#).
 - c. Whether the applicant's motion has merits.
 - d. Whether the applicant is entitled to the reliefs sought.

Whether certiorari is untenable

25. The 2nd respondent contended that the order of certiorari sought is not tenable in law in view of the lapse of the time provided by Order 53 rule 2 of the Civil Procedure Rules. The rule provides that:
- “Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for purposes of being quashed unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act, and where the proceeding is subject to appeal and time limited by law for bringing the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
26. The above provisions limit the time for seeking leave to apply for certiorari to six [6] months from the date of the offending decision. In the instant case, the impugned decision by the PSC was delivered on 21st February 2024 and communicated via letter dated 26th February 2024.
27. Under Order 53 Rule 2, any aggrieved party had up to the 26th August 2024 to lodge an application for leave to challenge the decision by the PSC. There is no dispute that the applicant filed his chamber summons seeking leave to apply for certiorari on 21st May 2024. In the circumstances, I find that the leave was sought within the period of six [6] months provided under Order 53 Rule 2 and therefore an order of certiorari is tenable if the applicant provides the basis for granting the order.



Whether prayer for reinstatement is bad in law

28. The 2nd respondent merely alleged that the prayer for reinstatement is incurably defective and bad in law within the meaning of section 90 of the [Employment Act](#). It never filed any submissions to substantiate that allegation. Section 90 provides that:

“Notwithstanding the provisions of section 4[1] of the [Limitation of Actions Act](#) [Cap. 22], no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

29. The above provision merely talks of the limitation period for commencing a suit or claim based on the [Employment Act](#) or a contract of service. I will therefore not speculate on what the 2nd respondent meant by alleging that the prayer for reinstatement offended section 90 of the [Employment Act](#).

Whether the motion has merits

30. The appeal before the PSC was on two grounds: -

- a. Unlawful redeployment contained in the letter dated 25th June 2020.
- b. Failure by the respondent to respond to his protest letter on the unconsented re-designation and instead terminating his employment on allegation of absence from duty. This was contained in letter dated 1st March 2021.

31. The applicant’s case before the Commission was that his redeployment from Director Procurement Unit in the Finance Department to Director Culture in the Department of Education, Youth and Culture amounted to a redesignation without his consent contrary to section 69 of the [County Governments Act](#).

32. The 1st respondent never responded to the first ground of appeal but it responded to the second round of unlawful termination stating that the termination was justified since the applicant had deserted duty. That fair procedure was followed because he was served with a show cause letter and he responded. Thereafter, he was accorded a hearing by the CHRAC where he made his representations and the same were considered before the decision to dismiss him was made.

33. After considering the material presented by the two sides, the PSC rendered the impugned decision on 21st February 2024. In the decision two issues were framed:

- a. Whether the 1st respondent followed the law in redeploying and redesignating the officer [Applicant herein].
- b. Whether the applicant deserted duty as alleged.

34. After analyzing the material presented, the PSC concluded that the 1st respondent contravened section 69 of the [County Governments Act](#) as the redesignation did not meet the requirements set thereunder. Consequently, the applicant was awarded a compensation of 12 months salary for the irregular and illegal redeployment and redesignation.

35. As regards the second issues, the PSC found that the termination of employment was fair since the 1st respondent had proved that the applicant had absconded duty after the redeployment and that he was



accorded a hearing before the dismissal. Consequently, the dismissal was upheld but with a rider that the applicant was entitled to his pension benefits.

36. The question that arises is whether the applicant has laid any basis upon which the court can review the above decision as prayed in the motion herein. The grounds upon which a court of law can review administrative decisions are now well settled. In the Ugandan case of *Pastoli v Kabale District Local Government Council & Others* [2008] EA 300, the court observed that: -

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality.

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to make a decision. [*Al-Mehidswi v Secretary of State for the Housing Department* [1990] AC 876.”

37. I have considered the facts of this case and the submissions by the parties. To begin with the PSC acted within its Constitutional and statutory mandate under Article 234 [2] [i] of *the Constitution*, now satisfied that section 77 of *County Governments Act* and section 86 of the PSC Act. There is no evidence that the PSC committed any illegality by acting without jurisdiction or ultra vires.
38. The PSC was also accused of unreasonably failing to address itself to the facts and the law before it. However, there is no prove that the decision by the PSC was irrational or defiance of logic and acceptable standards. Having read the impugned decision, I would say that the PSC considered the evidence and submissions tendered, statute law and even case law before arriving at the final conclusion. In my view, the decision by the PSC was rational and well founded.
39. However, the court finds that the decision was tainted with procedural impropriety. The applicant filed his first appeal vide letter dated 25th June 2020 against the redeployment but it was not acted upon. The delay in determining the appeal with speed forced the applicant seek help from the Senate and even the Ombudsman in July and December 2020.
40. The said delay fortified the 1st respondent resolve not to respond to the applicant’s protest letter and instead commenced disciplinary process which culminated in the dismissal on 24th February 2021. The applicant filed the second appeal challenging the dismissal on 1st March 2021 and the appeal delayed further until 21st February 2024 when the impugned decision was delivered.
41. The purpose of the internal appeal mechanism under section 77 of *County Governments Act* is to expedite dispute resolution in the County Public Service. From 25th June 2020 to 21st February 2024 is



well over three and half years. Such period is unreasonable and contrary to Article 47 of the Constitution which provides for the right to fair administrative action. The Article states that: -

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

42. The above provision means that where a person’s rights and fundamental freedoms are likely to be affected by administrative action, then the decision must be made promptly, efficiently and fairly. In this case, however, the PSC parked the applicant’s appeal against the irregular redeployment from May 2020 to February 2024 when it allowed it. However, it was too late and the PSC actually acted in vain because by then the applicant had already been dismissed for three years.
43. Had the PSC acted promptly after receiving the first appeal dated 25th June 2020, it would have protected the rights of the applicant and also guided the 1st respondent on how to carry out lawful redeployments and redesignations. In view of the foregoing matters, I find and hold that the applicant has demonstrated that the impugned decision by the PSC is tainted with procedural impropriety, which amounts to valid ground upon which this court can review the decision.

Reliefs sought

44. To begin with, the applicant carefully avoided to challenge the whole decision of the PSC. He challenged the decision “to the extent that it purported to uphold the 1st respondent’s decision to terminate his employment.” He never challenged the award of 12 months salary compensation for the irregular and illegal redeployment and redesignation. May be he did so because there were two appeal involved.
45. As regards the prayer for order of certiorari, I have found that the impugned decision was arrived at after an unreasonable delay contrary to Article 47 of the Constitution. Consequently, I find that the applicant is entitled to, the order of certiorari quashing the decision of the PSC delivered on 21st February 2024 to the extent that it purports to uphold the 1st respondent’s decision to terminate the services of the applicant Mr. Lawrence Mutembei Nicholas as an employee of Tharaka Nithi County. However, despite that entitlement, I will not grant the order because doing so will be in vain for reasons given below.
46. The applicant prayed for order of mandamus to compel the 1st respondent to reinstate him but I find that order is untenable because, first, under section 12[3] [vii] of ELRC Act the court has no jurisdiction to order reinstatement after the lapse of 3 years from the date of termination. Secondly, the termination to dismiss him was grounded on valid reason and fair procedure was followed. Finally, it has not been shown that a reinstatement is practicable considering the period of separation. Consequently, I decline to compel the 1st respondent to reinstate the applicant as prayed.
47. Likewise, the court will not compel the 1st respondent to pay the 12 months’ salary compensation awarded by the PSC within 14 days. Whereas there is no dispute that PSC made the said award in the impugned decision, the law provides the procedure for enforcing a decision of the PSC given in an appeal like in the instant case. Section 89 of the PSC Act provides that: -

“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.”



48. In view of the above express provision, I decline to issue the order of mandamus to compel the 1st respondent to pay the compensation ordered by the PSC since the jurisdiction contemplated by the said provision has not been properly invoked.
49. The order of prohibition to prevent the respondents from upholding the termination of his services by the 1st respondent on 21st February 2024 is also untenable. Prohibition does not look into the past but it is forward looking. It only operates to prevent someone from making a decision or implementing the decision. In this case, the PSC upheld the dismissal of the applicant way back on 24th February 2024. Consequently, the order of prohibition was sought after horse had bolted and it can't be issued as that would amount to vanity.

Conclusion

50. I have found that the decision by the PSC dated 24th February 2024 was tainted with procedural impropriety but declined the order to quash it to the extent that it upheld the dismissal of the applicant by the 1st respondent because granting it will be in vain. I have further found that the prayer for order of mandamus and prohibition cannot issue in the circumstance of this case. Consequently, I dismiss the Notice of Motion dated 24th May 2024 to the extent highlighted above but award costs of the suit to the applicant because the suit has succeeded partially.

DATED, SIGNED AND DELIVERED AT NYERI THIS 11TH DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 [3] of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

