



Republic v Taita Taveta County Assembly Sectoral Committee on Administration, Security, Devolution, Public Participation, Community Services & Drug Control & 3 others; Governor, County Government of Taita Taveta (Interested Party); Lukindo (Ex parte Applicant) (Judicial Review Application E004 of 2025) [2025] KEELRC 2379 (KLR) (8 August 2025) (Ruling)

Neutral citation: [2025] KEELRC 2379 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
JUDICIAL REVIEW APPLICATION E004 OF 2025**

**M MBARŪ, J
AUGUST 8, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**TAITA TAVETA COUNTY ASSEMBLY SECTORAL COMMITTEE ON
ADMINISTRATION, SECURITY, DEVOLUTION, PUBLIC PARTICIPATION,
COMMUNITY SERVICES & DRUG CONTROL 1ST RESPONDENT**

THE COUNTY ASSEMBLY OF TAITA TAVETA 2ND RESPONDENT

HON SPEAKER, COUNTY ASSEMBLY OF TAITA TAVETA . 3RD RESPONDENT

THE CLERK, COUNTY ASSEMBLY OF TAITA TAVETA 4TH RESPONDENT

AND

**THE GOVERNOR, COUNTY GOVERNMENT OF TAITA
TAVETA INTERESTED PARTY**

AND

RICHARD MAIMB LUKINDO EX PARTE APPLICANT

RULING

1. On 3 April 2025, the ex parte applicant was granted leave to file these proceedings. He filed his application dated 4 April 2025 seeking orders of certiorari to quash the recommendation by the 1st respondent submitted to the 2nd respondent on 1 April 2025 inviting the interested party to revoke his



- appointment. The recommendation also invited the interested party to submit a formal termination letter on the appointment of the ex parte applicant to the 2nd respondent.
2. The ex parte applicant, therefore, is seeking in his application that an order of prohibition be issued stopping the interested party from implementing the recommendations by the 1st respondent and tabled to the 2nd respondent on 1 April 2025.
 3. In response, the respondents filed Notice of Preliminary Objections dated 9 April 2025 on the grounds:
 1. The judicial review application is misconceived and or bad in law and therefore should be dismissed with costs.
 2. The judicial review application is a non-starter and ill-advised, as the Orders and prayers sought cannot issue for want of jurisdiction.
 3. The judicial review application is a nonstarter and ill-founded as it offends the doctrine and or principle of exhaustion of alternative remedies.
 4. The court is devoid of jurisdiction for reasons that the judicial review application is in violation of article 234(2) (i) of *the Constitution*, section 77 of the County Government Act and Section 87(2) of the *Public Service Commission Act*.
 5. The entire judicial review application is bad in law, incompetent, frivolous and vexatious, and the same is otherwise in abuse of court process.
 6. The judicial review application ought to be dismissed with costs.
 4. Both parties attended court on 7 May 2025 and agreed to address the objections through written submissions. A mention date was allocated for 21 July 2025 to confirm compliance.
 5. The respondents filed written submissions.
 6. The ex parte application did not attend or file any written submissions.
 7. The respondents submitted that the orders sought by the ex parte applicant relate to an order of certiorari to quash the recommendation by the 1st respondent and the direction to the interested party to revoke his appointment and termination of his appointment. The recommendation was tabled before the 2nd respondent on 1 April 2025.
 8. The ex parte applicant was appointed the political advisor, a position within the governance structure of the County. This position has since been revoked following a report by the 1st respondent. The ex parte applicant holds a forged degree certificate from the University of Nairobi, and the ex parte applicant argues that the recommendation of the 1st respondent did not comply with the rules of natural justice.
 9. The application by the ex parte applicant is filed before this court without jurisdiction and in violation of the doctrine and principle of exhaustion of alternative remedies. Where legislation has provided a remedy and prescribed a clear procedure for redress, a litigant cannot invoke the prisons of *the constitution* or any other law for redress. In the case of Speaker of the National Assembly v Karume [2008] eKLR, the court held that where there is a clear procedure for redress of any particular grievance prescribed by *the constitution* of an Act of Parliament, that procedure should be strictly followed.
 10. In the case of Geoffrey Muthinji & Another v Samuel Muguna Henry & 1756 others [2015] eKLR, the court held that where a dispute resolution mechanism exists outside the court, the same should be exhausted before the jurisdiction of the court is invoked. In this case, the ex parte applicant has



not exhausted the dispute resolution mechanism and or procedures under section 77 of the County Government Act (CGA) and section 87(2) of the *Public Service Commission Act*. both require an employee aggrieved by the decision of a county government to appeal against such decision to the Public Service Commission, as held in Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR; Republic v Migori County Secretary & Another; Migori County Public Service Board (Interested party); Ngwala & 8 others (ex parte applicants) [2022] eKLR.

11. Unless an applicant can demonstrate that there are exceptional circumstances to justify moving the court, the available dispute resolution mechanism should be applied. The court in this instance is wrongly invoked, and the judicial review proceedings should be dismissed.
12. There are no submissions by the ex parte applicant as set out above.

Determination

13. In his application dated 4 April 2025, the ex parte applicant has filed his affidavit and avers that he was appointed the political advisor to the interested party through a letter dated 1 September 2022. He learnt from social media that his appointment had been revoked following a report by the 1st respondent to the 2nd respondent based on claims that he did not meet the minimum academic qualifications and that he held a forged degree certificate. The 2nd respondent proceeds to make a recommendation to the interested party to revoke his appointment through a letter dated 1 April 2025.
14. The appointment as political advisor to the interested party is a position within the governance structure of the County Government of Taita Taveta. This is a position regulated under the provisions of the CGA.
15. Any grievance arising out of the employment relationship between the ex parte applicant and the respondents, including the interested party, should be addressed through the mechanisms under the GCA and or the *Public Service Commission Act*.
16. The Court of Appeal in the case of Secretary County Public Service Board & Another v Hulbhai Gedi Abdille(2017) eKLR addressed the doctrine of exhaustion of alternative remedies. It upheld the decision in Speaker of the National Assembly v James Njenga Karume (2008) eKLR, where the court held that where there is a clear procedure for the redress of any particular grievances prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.
17. In this instance, being aggrieved by the report of the first respondent and the recommendations of the second respondent to the interested party, the ex parte applicant ought to have applied the mechanism under section 77 of the CGA.
18. In Elizabeth Ominde & 5 others v Kakamega County Government & another [2020] KEELRC 1487 (KLR), the court held that the provisions of section 77 of the CGA are mandatory, and the employee of the County Government should invoke the appeal mechanism to the Public Service Commission before approaching the court. It is premature to file a suit before following the procedure provided under Section 77 of the CGA. See Orwa v County Government of Kakamega & another [2022] KEELRC 13056 (KLR).
19. The ex parte applicant addresses no exceptional circumstances to justify invoking the judicial route. The fact of failing to file any written submissions upon the objections filed by the respondents, despite moving the court with his application dated 4 April 2025, does not place the ex parte applicant in good standing.



20. Accordingly, these proceedings are premature, the court lacks jurisdiction as a first instance under provisions of Section 77 of the County Government Act; there is a failure to exhaust clear procedures of appeal under Section 77 of the County Government Act.

21. The application is struck out. Costs to the respondents.

DELIVERED IN OPEN COURT AT MOMBASA THIS 8 DAY OF AUGUST 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

