



**Abdille v County Government of Wajir & 4 others (Petition E152 of 2025) [2025] KEELRC 2370 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2370 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E152 OF 2025  
DKN MARETE, J  
AUGUST 14, 2025**

**BETWEEN**

**SADIK OMOR ABDILLE ..... PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF WAJIR ..... 1<sup>ST</sup> RESPONDENT**

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

**THE COUNTY SECRETARY, WAJIR COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR HEALTH, WAJIR COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**THE COUNTY CHIEF OFFICER, DEPARTMENT OF MEDICAL SERVICES, WAJIR COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This is an application dated 4th August, 2025 seeking inter alia an order compelling the Respondents to immediately grant the applicant study leave to enable him to report to the University of Nairobi for a Postgraduate Diploma in Ophthalmology on 18th August, 2025. This is in addition to any other orders as the Court deems appropriate in addition to the costs of this application.
2. The application is grounded on the facts that the applicant, a Medical Officer of the 1st Respondent has been a diligent and dedicated officer of the 1st Respondent for seven years. Despite this stint of service, the applicant has stagnated on the same position as a medical officer in contravention of the scheme of service in public office as well as the subsisting Collective Bargaining Agreement. It is his case that this is not accidental but a consequence of discriminative tendencies on the part of the Respondents on grounds of his ethnic background. He comes from one of the marginalized communities in the County of Wajir.



3. The Applicant has further tabulated a list of twenty-six (26) colleague Medical Officers and their postgraduate profiles who have previously been granted paid study leave to pursue postgraduate trainings at various academic learning institutions. Of these, only three (3) had completed three years of service before such release. Others were even allowed out to sub-speciality fellowships immediately on completion of the Masters program without having offered service for time longer than thirty (30) days.
4. The Applicant further avers that the release of some medical officers for study leave before other deserving senior medical officers is a demonstration of favouritism, nepotism and other improper motives in the part of the Respondents' management of their human resource portfolio. This is to the extent that some of the medical officers released to postgraduate studies were still in medical school when the Petitioner/Applicant had already commenced service for the Respondents.
5. The Petitioner in the penultimate demonstrates and decries his various admissions and turn downs for postgraduate studies by the Respondents through letters dated 4th September, 2023, 5th April, 2025 and the current one of 16th July, 2025. These have all been rubbished by the Respondents and come in support of his application.
6. The Respondents faults and opposes the application for being premature, misconceived and an abuse of the process of court. It is their case that this court lacks jurisdiction to hear and determine this application by dint of Article VII (a) of the parties' subsisting Collective Bargaining Agreement (CBA) that governs grievance redress mechanisms inter partes. This is besides being a violation of Section 77, 85 and 87 (2) that provide for the jurisdiction of the parties wishing to lodge complains like are posed by the Petitioner/Applicant. This comes out as follows;
  - a. Individual grievance

“Individual employees of the County Government of Wajir wishing to raise a grievance with which he/she is directly and personally concerned, shall first approach his immediate superior. If case settlement is not reached, he/she shall have the right to appeal to the higher levels of Management as soon as possible in accordance with the established procedures. The employee may be accompanied by an accredited Union representative as per.”
7. Again, the Respondent candidly avers as follows;

“The instant proceedings have been instituted violation of Section 77 of the County Government Act and Section 85 and 87(2) of the Public Service Commission Act as the jurisdiction to hear the complaints raised by the Petitioner vests, at the first instance, in the Public Service Commission which has wide jurisdiction to hear appeal in respect of decisions regarding inter alia, recruitment, remuneration and terms and conditions of service. Section 87(2) underscores the mandatory nature of such mechanism and stipulates that;

“A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.”
8. The Respondents further aver that these proceedings have been instituted in violation of Section 9(2) of the Fair Administrative Action Act which requires parties to exhaust alternative remedies available



to them before approaching this Court. The Petitioner in the instant case has not pursued these nor has he filed any application for exemption from such exhaustion.

9. The Respondents again brings out a Preliminary Objection dated 7th August, 2025 to this extent. This is besides a long list of authorities in support of their case and opposition to the application.
10. The Respondents in their oral submissions in opposition to the application submit that the Petitioner/Applicant was also faulty in that he did not use appropriate formal methods to file his application for study leave. It is their submission that the application was made on personal emails instead of formal and official emails thereby begrudging the exercise of the seriousness that it befits. The Petitioner however counters this by submitting that the so called personal emails are a normal means of communication amongst the county staff and have served in the past and therefore this is only excusive and lame-duck.
11. The Petitioner posits that this is the right forum for determination of the issues in dispute. It is his position and submission that this Court is vested with requisite authority and jurisdiction to determine this application and cause. This is a matter of constitutional violations determinable by this Court. It is his further case that the issues here are not disciplinary and therefore not material for determination by the Public Service Commission. In any event, he has exhausted all grievance seeking mechanisms and is rightly before this Court to pursue a claim for violations of his constitutional rights. He prays that this application be considered so as to relief him of the tight-rope position he now finds himself in and the possibility of his missing another opportunity for further advanced training and career progression.
12. The thrust of this matter is that it is a constitutional petition seeking this Court's intervention on matters of a violation of the Petitioner/Applicant's constitutional rights to attend further advanced studies. The Petitioner/Applicant has elaborately presented a case and evidence of such violations in terms of denied promotions and opportunities to pursue further studies even when such opportunities arose. The excuse of informality in the application process is not tenable in the circumstances. The loud cry by the Petitioner/Applicant over a long time should have been heard and acted upon if the environment in which all this was happening had been fair and just.
13. Again, the reliance on doctrine of exhaustion as exemplified under Article VII (a) of the CBA and Section 77 of the County Government Act do not suffice to oust the jurisdiction of this Court in matters of constitutional violation. The provisions of the CBA and Articles 77, 85 and 87(2) of the County Government Act were only intended for routine matters of employer/employee relationships pertaining to everyday affairs like discipline and others. Issues of fundamental rights and freedoms were never intended to be relegated to forums as designed by the CBA or statute. These are constitutional matters that are within the jurisdiction of this Court.
14. I am therefore inclined to allow the application and order reliefs as follows;
  - (i) The Respondents be and are hereby ordered to grant and release the Applicant to study leave to enable him to report to the University of Nairobi to pursue a postgraduate Diploma in Ophthalmology on 18th August, 2025.
  - (ii) The Respondents be and are hereby ordered to make, file and serve a response to the petition in thirty days.
  - (iii) Hearing inter partes on 30th September, 2025 before Court No. 5.
  - (iv) The costs of this application shall be borne by the Respondent.

**DELIVERED, DATED AND SIGNED THIS 14<sup>TH</sup> DAY OF AUGUST 2025.**



**D. K. NJAGI MARETE**

**JUDGE**

Appearances:-

1. Mr. Abubakar instructed by Mohamed Abdirahman and Company Advocates for the Petitioner/Applicant.
2. Mr. Kusow instructed by Kusow and Co. Advocates for the Respondents.

