



**Kenya Association of Health Administrators v Nairobi City County Secretary & 2 others (Petition E211 of 2023) [2024] KEELRC 710 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 710 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E211 OF 2023  
BOM MANANI, J  
MARCH 20, 2024**

**BETWEEN**  
**KENYA ASSOCIATION OF HEALTH ADMINISTRATORS ..... PETITIONER**  
**AND**  
**NAIROBI CITY COUNTY SECRETARY ..... 1<sup>ST</sup> RESPONDENT**  
**PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**  
**NAIROBI CITY COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Background**

1. The instant Petition seeks to challenge the appointment of the Deputy Health Director for the 3<sup>rd</sup> Respondent by the 2<sup>nd</sup> Respondent that was made on 23<sup>rd</sup> October 2023. It is the Petitioner's contention that the successful candidate did not meet the qualifications for the position.
2. The Petition is opposed on the ground that the recruitment process was above board. Therefore, it (the Petition) lacks merit.
3. Together with the Petition, the Petitioner filed the application dated 10<sup>th</sup> November 2023 for conservatory orders. In the application, the Petitioner asks the court to bar the 2<sup>nd</sup> Respondent from issuing the successful candidate with the letter of appointment.
4. The application is also opposed. The Respondents argue that since the successful candidate has already been issued with the letter of appointment dated 23<sup>rd</sup> October 2023, this court cannot issue the orders sought. In the Respondents' view, the instant application has been overtaken by events.
5. The Respondents have also filed a Preliminary Objection to both the Petition and application for conservatory orders. They contend that the Petition has been filed prematurely without exhausting the



dispute resolution mechanisms under section 77 of the [County Governments Act](#) as read with sections, 85, 86 and 87(2) of the [Public Service Commission Act](#). Thus and in the Respondents' view, this court has no jurisdiction to entertain the instant action.

6. When the matter came up for directions, the court asked that the Preliminary Objection be heard and determined in priority to all else. The parties were asked to file written submissions on the objection. The directions were complied with.

## **Analysis**

7. The gist of the objection by the Respondents is that article 234(2) (j) of [the Constitution](#) vests the power to hear appeals from the county public service in the Public Service Commission. This constitutional edict is operationalized through section 77 of the [County Governments Act](#) as read with sections 85, 86 and 87(2) of the [Public Service Commission Act](#).
8. That the law prohibits a litigant from instituting court proceedings before he has exhausted the available alternative mechanisms for dispute resolution is not in doubt. In the context of the instant case, section 87(2) of the [Public Service Commission Act](#) specifically prohibits institution of court proceedings in respect of matters that the Public Service Commission is required to handle by way of appeals.
9. Based on the foregoing, the Respondents contend that the instant action by the Petitioner is premature as it was filed in contravention of the aforesaid requirements of the law. As such, the court should not assume jurisdiction over the dispute.
10. The legal position is that the various provisions that have been cited by the Respondents in support of the preliminary objection do not oust the court's jurisdiction to entertain a dispute that is required to be submitted to the Public Service Commission under the aforesaid appeals mechanism. Rather, they (the provisions) postpone this jurisdiction. As a consequence, the court may only entertain such disputes after they have been processed through the appeals mechanism aforesaid.
11. The critical question however, is whether this position is absolute. Put differently, is the court absolutely forbidden from intervening in such disputes until the existing appeals mechanism is exhausted?
12. In this respect, it has been observed that although the court should generally decline jurisdiction over such disputes, it may assume jurisdiction over them in exceptional circumstances. Such circumstances may arise when the appeals mechanism that is provided is incapable of providing the litigant with an effective remedy.
13. Therefore, before the court assumes jurisdiction over such dispute, it must be satisfied that the remedy that the parties seek cannot be granted under the available alternative dispute resolution process. If the parties are able to get the remedy that they seek through the available appeals process, the court should decline jurisdiction.
14. In the instant action, the Petitioner seeks orders of: declaration that the 2<sup>nd</sup> Respondent's recruitment of the successful candidate to the position of Deputy Director Health Administration violated [the Constitution](#) and the law; certiorari to quash the appointment of the successful candidate made by the 2<sup>nd</sup> Respondent to the position of Deputy Director Health Administration; and mandamus to compel the 2<sup>nd</sup> Respondent to repeat the aforesaid recruitment process.
15. Under section 85 of the [Public Service Commission Act](#), the Public Service Commission (the Commission) has powers to hear and determine appeals arising from recruitment of personnel into



county public service. In the process and by virtue of section 85 (d) of the Act, the Commission is entitled to consider whether the recruitment was done in compliance with the values and principles that are articulated under articles 10 and 232 of *the Constitution*.

16. Under section 86 of the Act, the Commission has powers to: uphold the decision; set aside the decision; vary the decision as it deems just; and give such directions as it may consider appropriate with respect to the decision.
17. Quite evidently, the powers donated to the Commission under these sections serve the same purpose as the order of certiorari that the Petitioner seeks in these proceedings. Further, the Commission has powers under the provisions to issue any other directions, including that the impugned recruitment be commenced a fresh.
18. In my view, the Petitioner is able to get an effective remedy before the Commission under the aforesaid provisions of statute. Therefore, there was no need for it to sidestep the appeals process under the aforesaid various pieces of legislation and approach the court directly.
19. As regards the conservatory orders that are sought in the application, it is noteworthy that the Petitioner seeks to stop the 2<sup>nd</sup> Respondent from issuing the successful candidate with a letter of appointment. As it is apparent from the record, the successful candidate was issued with a letter of appointment on 23<sup>rd</sup> October 2023. As such, the request for conservatory orders has been overtaken by events and cannot issue as currently framed.

#### **Determination**

20. Having regard to the foregoing, it is apparent that the court's jurisdiction was wrongly invoked in the circumstances of this case.
21. As a result, the court declines to assume jurisdiction over the dispute
22. The parties are directed to exhaust the appeals mechanism that is set out under section 77 of the *County Governments Act* as read with sections 85, 86 and 87 of the *Public Service Commission Act* before approaching this court.
23. For the moment, the court having declined jurisdiction over the matter, the entire Petition is hereby struck out with costs to the Respondents.

**DATED, SIGNED AND DELIVERED ON THE 20<sup>TH</sup> DAY OF MARCH, 2024**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

..... for the Petitioner

.....for the Respondents

**Order**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

**B. O. M MANANI**

