



**Okech v County Government of Migori & 2 others (Judicial Review Application E001 of 2024) [2024] KEELRC 481 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 481 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW APPLICATION E001 OF 2024**

**S RADIDO, J**

**MARCH 6, 2024**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS IN THE NATURE OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF ARTICLE 23(F) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CHAPTER 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 76 OF THE COUNTY GOVERNMENTS ACT**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**TABITHA AKOTH OKECH ..... APPLICANT**

**AND**

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

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

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MIGORI .... 3<sup>RD</sup> RESPONDENT**



## RULING

1. On 3 July 2023, the Chief Officer, Medical Services with the County Government of Migori issued a show cause letter to Tabitha Akoth Okech (applicant) informing her that her salary had been stopped awaiting her response to allegations that her release to pursue a master's degree programme was unprocedural. The salary stoppage had been preceded by a show cause letter dated 16 February 2023, accusing the applicant of having failed to attend a staff headcount exercise.
2. On 26 July 2023, the applicant purportedly wrote to the County Secretary, alerting him that she had resumed work after successfully completing the master's degree course in field epidemiology.
3. The applicant then engaged in correspondence with the Respondents on the issue of stoppage of salary and on 5 October 2023, the Chief Officer issued a warning letter to her.
4. The warning letter stated:

I acknowledge receipt of a letter from the Ministry of Health dated 20<sup>th</sup> July 2023 and your subsequent complaint letter dated 30<sup>th</sup> August 2023 whose contents have been duly noted. The departmental Human Resource Management & Advisory Committee at a meeting held on 14<sup>th</sup> September 2023 vide Minute No. DHRMAC 23/09/2023/3 deliberated on your case and noted the following shortcomings from you.

That without authority from the county leadership, you decided to continue your studies in violation of training policy guideline and training bond instrument which ended on December 2022. You however reported back for duties on 26<sup>th</sup> July 2023.

That you only sought for and was issued with a letter from the Ministry of Health on 20<sup>th</sup> July 2023 authenticating that your training had been extended after complaints had been raised about your whereabouts by your employer.

Your omission to communicate to the office and your absence from duty without formal authorization amounts to abscondment from duty which is a clear violation of the [Employment Act](#) section 44(4)(a) and a breach of training policy guidelines.

This letter therefore serves as the first warning to you and repetition of similar or related misconduct will not be tolerated whatsoever and any continued unacceptable misconduct will result in further disciplinary action which may ultimately result in a recommendation for the termination of your employment.

5. The show cause and warning letters prompted the applicant to move the Court on 16 January 2024, seeking leave to commence judicial review proceedings on the ground that she was not accorded a hearing before the issuance of the show cause and warning letters.
6. The applicant further asserted that the warning letter was irrational, illegal and procedurally improper as it raised new allegations not preceded by a show-cause notice.
7. The Court directed the applicant to serve the application and that the Respondents file responses ahead of oral submissions on 30 January 2024.
8. The Respondents filed Grounds of Opposition on 24 January 2024, challenging the first instance jurisdiction of the Court in light of Article 234(2)(i) of the [Constitution](#) as read with section 77 of the



County Governments Act, sections 85, 86, 87 and 88 of the Public Service Commission Act, section 9(2) and (3) of the Fair Administrative Action Act and Order 53 Rule 2 of the Civil Procedure Rules.

9. The Court took oral submissions as scheduled.
10. The Court has considered the application for leave and attachments, the responses and submissions.
11. The applicant is an employee of the county public service, Migori.
12. The letters of 3 July 2023 and 5 October 2023 were written by the Respondents in a purported exercise of disciplinary control over the applicant and on the ground of breach of the training policy.
13. Section 77 of the County Governments Act provides:

77 Appeals to the Public Service Commission

- (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in the exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the “Commission”) against the decision.
  - (2) The Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of—
    - (a) ...
    - (b) remuneration and terms and conditions of service;
    - (c) disciplinary control;
    - (d) ...
    - (e) ...
    - (f) ...
    - (g) ....
14. By dint of section 77 of the County Governments Act, the applicant had the option of making an appeal to the Public Service Commission of Kenya.
  15. The jurisdictional mandate of the Public Service Commission in hearing appeals from decisions of county public service boards or decisions made in the purported exercise of its powers is amplified in section 87(2) of the Public Service Commission Act which is in terms:
    - (2) 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.
  16. The applicant did not attempt to exercise the option allowed to her under the applicable legal framework. She did not exhaust the alternative dispute resolution avenues outlined in law, and she did not attempt to plead or demonstrate any exceptional circumstances to warrant the Court to exercise first instance jurisdiction.
  17. Judicial review proceedings under the Law Reform Act and Civil Procedure Rules, although now given Constitutional anchor are a special genre of proceedings and relief may be declined even when a case has been made out.



18. In the circumstances of these proceedings, the Court finds it is not germane to grant leave as the applicant has viable and effective options to redress the alleged violations of her contractual rights through the appellate jurisdiction of the Public Service Commission.
19. The Court was approached prematurely.

### **Conclusion and Orders**

20. In light of the above, leave is declined and the Summons dated 16 January 2024 is dismissed with no order on costs as the parties are still in an employment relationship.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 6<sup>TH</sup> DAY F MARCH 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances:-

For applicant - Mauwa & Co. Advocates

For Respondents - Okongo Wandago & Co. Advocates

Court Assistant - Chemwolo

