



**Nyambane v County Government of Uasin Gishu (Cause E004 of 2024) [2024] KEELRC 1665 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1665 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E004 OF 2024  
MA ONYANGO, J  
JUNE 28, 2024**

**BETWEEN**

**WYCLIFF OBURI NYAMBANE ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF UASIN GISHU ..... RESPONDENT**

**RULING**

1. The Respondent filed the Preliminary objection dated 12<sup>th</sup> February 2024 on grounds that:
  - a. The suit offends the mandatory provisions of section 74(1) of the *Public Service Commission Act*, No. 10 of 2017 and paragraph 10 of the Public Service Commission (County Appeals Procedures) Regulations, 2022 where the Claimant has failed to invoke internal dispute resolution mechanisms prescribed under the *Public Service Commission Act* No. 10 of 2017 before approaching this court.
  - b. That the suit against the Respondent is fatally defective and incurably defective and ought to be struck out for failing to comply with the mandatory provisions of section 77(2) of the *County Governments Act*, No. 17 of 2012
  - c. That in view of the doctrine of exhaustion of internal dispute resolution mechanisms, the jurisdiction of this court has been prematurely invoked.
  - d. That the suit is thus bad in law and is abuse of the court process and the same should be struck out with costs to the Respondent.
2. The Preliminary objection was disposed of by way written submissions as directed by the court.



## Respondent's submissions

3. The Respondents in its submissions filed in court on 24<sup>th</sup> March 2024 has submitted that the proceedings before this court are premature as the court should not be seen to interfere or stop an internal dispute resolution mechanism.
4. According to the Respondent, this court is not clothed with jurisdiction to determine the issues herein as the internal disciplinary mechanisms have not been exhausted.
5. The Court was urged to allow the preliminary objection with costs to the Respondent. DIVISION - The Claimant's submissions
6. The Claimant in his submissions dated 12<sup>th</sup> March 2024 relied on the case of Patrick Kariithi Wahome & 114 others vs County Government of Laikipia & Another and Transitional Authority & Another (Interested Parties) (2020) eKLR where the court took the position that section 77 of the County Government Act does not oust or restrict the jurisdiction of the court for want of exhaustion of procedure.
7. Further, according to the Claimant, the diction employed in drafting section 77 of the County Governments Act, 2012 was not intended to lay down a mandatory requirement for appeal to the Public Service Commission. The Claimant submits that he was at liberty to choose the forum he intended to pursue his claim against the Respondent.
8. The Claimant further submits that had the Claimant opted to appeal to the Public Service Commission, his appeal would have been rendered nugatory as the Commission is devoid of jurisdiction to grant the interlocutory relief sought by the Claimant pending the determination of the appeal. To buttress this position, the Claimant cited the case of Robert Khamala Situma & 8 others vs Acting Clerk of the Nairobi City County Assembly (2022) eKLR.
9. The Claimant in its submissions has contended that section 77 of the County Government Act is not coached in mandatory terms and further, that the Public Service Commission on Appeal cannot issue the interlocutory remedy sought by the Claimant herein, and neither can it grant the reliefs prayed for.

## Determination

10. The Respondent's contention is that the Claimant is improperly before this Court because he has not exhausted the dispute resolution mechanism provided under Section 77 of the County Governments Act and Section 85 of the Public Service Commission Act.
11. Section 77 (1) and (2) of the County Governments Act provides:  
77.
  - (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in a county government in exercise or purported exercise of disciplinary control against any public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against that 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) .....



(c) disciplinary control;

12. The Respondent has also cited Section 85 of the Public Service Commission Act which provides:-

85. The Commission shall, in order to discharge its mandate under Article 234(2)(i) of the Constitution, hear and determine appeals in respect of any decision relating to engagement of any person in a County Government, including a decision in respect of –

(a) .....

(b) .....

(c) disciplinary control;

13. It is not in doubt that the Claimant filed the instant suit after he was suspended from employment seeking to have the decision suspending him quashed.

14. In its decision in Secretary County Public Service Board and Another -vs- Hulbhai Gedi Abdulla (2017) eKLR the Court of Appeal pronounced itself on the question of interpretation of section 77 of the County Governments Act,2012 when it observed as follows:

“There is no doubt that the Respondent initiated the judicial review proceedings in utter disregard to the dispute resolution mechanism availed by Section 77 of the Act. The Section provides not the only forum through which the Respondent could agitate her grievance at first instance, but the jurisdiction thereof is a specialized one specifically tailored by the legislators to meet needs such as the Respondent’s. In our view, the most suitable and appropriate recourse for the Respondent was to invoke the appellate procedure under the Act rather than resort to the judicial process in the first instance.”

15. From the above precedent, it is clear that a litigant does not have the discretion to choose whether to follow the provision or not. Where redress of any particular grievance is prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

16. Flowing from the above, the instant claim is premature for failure to exhaust the appellate process established under section 77 of the County Governments Act as read with section 85 of the Public Service Commission Act.

17. Consequently, the Notice of Preliminary Objection dated 12<sup>th</sup> February 2024 is hereby upheld and the Claim herein is struck out with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28<sup>TH</sup> DAY OF JUNE, 2024**

**MAUREEN ONYANGO**

**JUDGE**

