



Mwakamba v Taita-Taveta County Public Service Board (Miscellaneous Cause E048 of 2023) [2024] KEELRC 2300 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2300 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS CAUSE E048 OF 2023**

**AK NZEI, J
SEPTEMBER 26, 2024**

BETWEEN

ELIPIDA MWAKAMBA APPLICANT

AND

TAITA-TAVETA COUNTY PUBLIC SERVICE BOARD RESPONDENT

RULING

1. The application before me is the Applicant’s Notice of Motion dated 2nd October 2023. The Applicant seeks the following Orders:-
 - a. That the decision by the Public Service Commission made on 19th September 2022 reinstating the Applicant into service, payment of withheld salaries and allowances, and payment of 12 months’ salary as compensation for unprocedural deployment be recognized, adopted and enforced as a judgment of the Court, and a decree do issue forthwith for execution.
 - b. That costs of the application be provided for.
2. The application, expressed to be brought under Section 89 of the *Public Service Commission Act*, is based on the Applicant’s supporting and supplementary affidavits sworn on 2/10/2023 and 9/7/2024 respectively. It is deponed in the said affidavits:-
 - a. that on 22nd June 2017, the Respondent unprocedurally removed the Applicant from the office of the Secretary to the County Public Service Board (the Respondent) and purportedly deployed her as Director Urban Areas Administration, which position was non-existent at the time, and which was, in any case, lower than the Applicant’s job group.
 - b. that despite the illegalities aforesaid, the Applicant discharged her duties in the new designation until 17th September 2019 when the Respondent unprocedurally terminated the Applicant’s



employment on ground that she was an employee of the County Government of Kilifi, and that she was irregularly deployed to the Respondent.

- c. that aggrieved by the decision, the Applicant appealed to the Public Service Commission (the Commission) pursuant to the provisions of Section 77 of the County Governments Act and Article 234 of the Constitution (of Kenya).
 - d. that the Commission heard both parties and on 19th September 2022 made a decision reinstating the Applicant to service and further directed the Respondent to pay the Applicant 12 months' salary for irregular deployment.
 - e. that in utter contempt, the Respondent on 30th June 2023 issued and/or caused to be issued to the Applicant an end of contract letter to allow her to access her gratuity.
 - f. that the Respondent was aggrieved by the decision of the commission, and filed a review before the Commission, but which the Commission dismissed on 31st July 2023.
 - g. that by a letter dated 31st August 2023, the Respondent again challenged the Commission's review decision, which application the Commission dismissed on 11th September 2023, and rightly so, on ground that the Commission was functus officio.
 - h. that the Respondent has refused to reinstate the Applicant, to reinstate her salary, and to pay her compensation as ordered by the Commission.
3. The application is opposed by the Respondent vide a replying affidavit of Rachael Mwadime, the Respondent's Acting Secretary, sworn on 28th November 2023. It is deponed in the said replying affidavit:-
- a. that the County Public Service Board of Taita-Taveta (the Respondent) did not remove the Applicant from the office of the Secretary/CEO for the County Public Service Board as it was not within the Board's jurisdiction to do so.
 - b. that the Applicant had been deployed as a Secretary to the Taita-Taveta County Public Service Board on a six years' non-renewable contract, which she fully served to term, and was duly paid her dues for the whole period upto June 2019 when her contract ended.
 - c. that the Applicant was also cleared and was paid her service gratuities.
 - d. that the Applicant's appeal to the Public Service Commission was irregular in the sense that she had already cleared as an employee of the County Government of Taita-Taveta by the time she was making the appeal.
 - e. that the decision of the Public Service Commission directing the Board to reinstate the Applicant was unprocedural since it was the same Commission that had made the decision to second the Applicant for a period of 3 years, for her to serve her contract. That the Board cannot reinstate a party who is not its staff. That the Applicant was never employed by the Board but by the office of the Governor.
4. On 29/8/2024, Counsel acting for both parties herein filed a written consent amending the substantive prayer in the application herein by deleting 19th September 2022 to 7th September 2022.



5. A copy of the Public Service Commission’s letter dated 16th September 2022 was exhibited by the Applicant as an annexure to her supplementary affidavit sworn on 16th September 2022. The letter, addressed to both the Applicant and the Respondent, states in part:-

“.....This is to notify you that vide a decision delivered on 7th September 2022, the Commission considered and allowed the above appeal pursuant to Section 86(4) of the Public Service Commission Act, 2017 as read together with Regulation 21 of the Public Service Commission (County Appeals Procedures) Regulations, 2022.

The commission directs that:-

- a. The Appellant be paid 12 month’s salary for un-procedural re-deployment from the position of Secretary/CEO County Public Service Board to the Directorate of Urban Areas Administration.
- b. The Appellant be reinstated back into the Public Service of the County to a position at job Group S and to a position commensurate to her qualification.

A detailed decision is attached herewith for information and further action.....”

6. I have also seen the Commission’s full decision referred to and reproduced in the foregoing letter. The same is dated 7th September 2022 and is annexed to the Applicant’s supplementary affidavit alongside the Commission’s said letter dated 16th September 2022. It is to be noted that this Court’s jurisdiction regarding enforcement of decisions of the Public Service Commission made pursuant to Section 77 of the County Government Act is circumscribed in Section 89 of the Public Service Commission Act. The Section states as follows:-

- “(1) Any person who is affected by the decision of the Commission made under this part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162(2) (a) of the Constitution.
- (2) Any person who refuses, fails or neglects to implement the Commission’s decisions is liable to disciplinary action in accordance with the applicable laws, including removal from office.”

7. It is clear from the foregoing statutory provision that this Court’s role in the instant case is limited to enforcement of the Public Service Commission’s decision dated 7th September 2022 and communicated/forwarded to the parties herein vide the Commission’s letter dated 16th September 2022. Parties cannot, at this stage, purport to purge holes into and /or to fault the commission’s said decision in any way. Any party questioning the merits, validity, legality and/or regularity of the said decision or the process/procedure leading to it, ought to have moved the Court by way of judicial review proceedings within the time prescribed in law and sought appropriate orders. No such proceedings are shown to have been taken out, and in my view, the Commission’s said decision has since vested, and must be complied with. This Court cannot sit in appeal over the said decision, but can enforce it in accordance with the statute.

8. The Respondent and/or its officials cannot arrogate to themselves the luxury of deciding whether or not to comply with the Commission’s said decision. Any person failing or refusing to implement the Commission’s decision risks being subjected to disciplinary proceedings pursuant to Section 89(2) of the Public Service Commission Act.



9. Section 89(2) of the *Public Service Commission Act* provides for punishment, by way of disciplinary action which may include removal from office of any person who refuses, fails or neglects to implement the Commission's decisions.
10. Having said that, I allow the Applicant's Notice of Motion dated 2nd October 2023 in the terms set out herein. The Public Service Commission's decision dated 7th September 2022 and communicated/forwarded to the parties herein vide/under cover of the Commission's letter dated 16th September 2022 is hereby adopted as a judgment of this court for purposes of enforcement. As stated in the Commission's said decision:-
- a. The Applicant shall be paid 12 month's salary for un-procedural re-deployment from the position of Secretary/CEO County Public Service Board to the Directorate of Urban Areas Administration.
 - b. The Applicant shall be reinstated back into the Public service of the County to a position at Job Group S and to a position commensurate to her qualification.
 - c. A decree shall issue forthwith, and shall be enforceable in accordance with this Court's Rules of procedure.
 - d. Costs of these proceedings are awarded to the Applicant.
 - e. Orders accordingly

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH SEPTEMBER 2024

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Applicant

.....Respondent

4

Misc e048/2023

