



**Kiparki v County Government of Kajiado & 4 others (Cause E610 of 2023)  
[2024] KEELRC 13187 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13187 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E610 OF 2023  
SC RUTTO, J  
NOVEMBER 22, 2024**

**BETWEEN**

**EMILY MATAANY KIPARKI ..... CLAIMANT**

**AND**

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

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

**COUNTY ADMINISTRATIVE COMMITTEE MEMBERS-PUBLIC SERVICE &  
ADMINISTRATION ..... 3<sup>RD</sup> RESPONDENT**

**KAJIADO COUNTY ASSEMBLY ..... 4<sup>TH</sup> RESPONDENT**

**FINANCE CHIEF OFFICER ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Claimant herein filed a Statement of Claim which was amended on 11<sup>th</sup> April 2024 in which she avers that the 2<sup>nd</sup> Respondent appointed her as a Director Governor’s Delivery Unit on a one year term contract with effect from 1<sup>st</sup> February 2019. That after being redeployed to the County Revenue Directorate in the Treasury, the 2<sup>nd</sup> Respondent extended her contract for three months with effect from 1<sup>st</sup> March 2020 to 30<sup>th</sup> May 2020. That the said contract was further extended for another two years with effect from 1<sup>st</sup> July 2020 to 30<sup>th</sup> July 2022.
2. The Claimant has further averred that she was later redeployed to the Public Service, Social Services Administration and Inspectorate Service where she was not assigned duties on account that there was no clear portfolio of the said position.
3. According to the Claimant, the 2<sup>nd</sup> Respondent deliberately refused to allocate her an office with the intention of frustrating her. She continued reporting to work and close to the expiry of her two year contract, she requested for an extension but there was no response.



4. The Claimant further avers that she was receiving her monthly salary until the month of June 2022 when the Respondent failed to extend her term or confirm her contract. In her view, the 2<sup>nd</sup> Respondent's unlawful actions were politically actuated against her. She believes that she was constructively dismissed amounting to unfair termination of her employment.
5. On account of the foregoing, the Claimant has asked the Court to grant her a number of reliefs being payment of salary from the month of June 2022 to June 2023, 21 months salary, gratuity, severance pay, compensation for unfair treatment and discrimination, punitive damages, compensation for traumatic experience and emotional distress, as well as costs of the suit plus interest.
6. Upon being served with the Statement of Claim, the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents filed a Response dated 10<sup>th</sup> January 2024.
7. Subsequently, the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents filed a Notice of Preliminary Objection dated 14<sup>th</sup> May 2024 in which the following grounds were raised:
  1. That the cause has been filed prematurely, hence contravenes Section 77 of the [County Government Act](#), No. 11 of 2012, Laws of Kenya.
  2. That this Honourable Court lacks jurisdiction to entertain the Claimant's cause dated 1<sup>st</sup> August 2023.
8. In response to the preliminary objection, the Claimant filed a Replying Affidavit dated 23<sup>rd</sup> September 2024 in which she avers that she has never been given reasons or heard regarding her non-renewal of contract. That therefore, no official decision has ever been rendered by the 2<sup>nd</sup> Respondent regarding her employment status. That there is therefore nothing to appeal against. She is advised by her advocates on record whose advice she believes to be true that she cannot appeal to the Public Service Commission without a formal decision being given by the 2<sup>nd</sup> Respondent.
9. It is the aforementioned preliminary objection that now comes up for determination. On 17<sup>th</sup> July 2024, the Court directed that the objection be canvassed by way of written submissions.

### **Submissions**

10. According to the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents, the issues raised by the Claimant relate to employment of persons in the county governments which are subject to an appeal to the Public Service Commission. The Respondents have further submitted that by dint of Section 77 (2) of the [County Governments Act](#), an issue relating to the recruitment, remuneration and conditions of service, that fall within the ambit of the County Public Service Boards are appealable to the Public Service Commission in the first instance.
11. The Respondents have further contended that the Claimant has not demonstrated to this Court that they indeed exhausted the existing statutory mechanism.
12. Submitting against the preliminary objection, the Claimant is emphatic that there is no official decision by the County Public Service Board (2<sup>nd</sup> Respondent) regarding her employment hence she could not appeal to the Public Service Commission. That her failure to exhaust the mechanisms is not deliberate but rather caused by the actions of the 2<sup>nd</sup> Respondent. The Claimant opines that the 2<sup>nd</sup> Respondent is acting in bad faith since they want the matter to be held in abeyance until the limitation of filing the suit lapses.



## Analysis and Determination

13. To my mind, the single issue for determination is whether the preliminary objection by the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents has merit, and should be allowed.
14. The crux of the instant preliminary objection by the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents is that by dint of Section 77 of the [County Governments Act](#), the Claimant ought to have moved the Public Service Commission in the first instance prior to filing the suit herein. On her part, the Claimant has contended that she is yet to receive a decision from the 2<sup>nd</sup> Respondent to allow her appeal to the Public Service Commission.
15. Section 77(1) of the [County Governments Act](#) provides as follows:

(77) (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in 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.
16. The facts of this case as pleaded by the Claimant is that she requested for the extension of her contract of employment in writing but did not receive any response from the 2<sup>nd</sup> Respondent. Further, the Claimant has stated that she stopped receiving her salary after June 2022 when the 2<sup>nd</sup> Respondent failed to extend or confirm her contract of employment.
17. It is this Court's considered view that the stoppage of the Claimant's salary coupled with the 2<sup>nd</sup> Respondent's failure to extend her employment contract was a decision albeit not in writing. In this regard, it was implied that the 2<sup>nd</sup> Respondent had decided not to extend her contract of employment hence the stoppage of her salary. Indeed, the silence and inaction by the 2<sup>nd</sup> Respondent was also an answer to her request for an extension of her contract of employment.
18. Therefore, it is not accurate for the Claimant to state that she had not received any decision from the 2<sup>nd</sup> Respondent to allow her appeal to the Public Service Commission. As such, the Court returns that the 2<sup>nd</sup> Respondent's failure to accede to the Claimant's request for extension of her contract of employment was a decision in itself.
19. Accordingly, pursuant to Section 77(1) of the [County Governments Act](#) as read together with Section 86 (1) of the [Public Service Commission Act](#), the Claimant was required to first move the Public Service Commission by way of an appeal prior to instituting the suit herein.
20. It is worth mentioning that the power of the Public Service Commission to hear appeals emanating from the decisions of the County Public Service Boards is primarily derived from Article 234 (2) (i) of the [Constitution](#) which provides as follows:

The Commission shall.... hear and determine appeals in respect of county governments' public service....
21. What's more, Section 87(2) of the [Public Service Commission Act](#) precludes any person from filing 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 appellate procedure has been exhausted.
22. Needless to say, the Claimant has moved the Court prematurely as it is evident that she is yet to exhaust the dispute resolution mechanisms established under the [Constitution](#), the [County Governments Act](#) and the [Public Service Commission Act](#).



23. As was held by the Court of Appeal in the case of *Secretary, County Public Service Board & another v Hulbbai Gedi Abdille* [2017] eKLR:

“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.”

24. I reiterate the position taken by the Learned Judges of the Court of Appeal and redirect the Claimant to first seek redress within the established dispute resolution mechanism in the Public Service Commission.

25. In view of the foregoing, I arrive at the inescapable conclusion that this Court lacks jurisdiction to entertain the Suit herein in the first instance, and must down its tools. In arriving at this determination, I am guided by the holding in the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR, where Nyarangi JA (as he then was) rendered himself thus;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

26. To this end, the Court upholds the preliminary objection dated 14<sup>th</sup> May 2024 and strikes out the Amended Statement of Claim dated 11<sup>th</sup> April 2024, with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2024.**

**STELLA RUTTO**

**JUDGE**

In the presence of:-

Ms. Morara for the Claimant

Ms. Wafula instructed by Mr. Kiunga for the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents

No appearance for 2<sup>nd</sup> and 4<sup>th</sup> Respondents

Millicent Court Assistant

**ORDER**

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

