



**Orumoi v County Government of Kajiado & 4 others (Cause E611 of 2023)  
[2024] KEELRC 13198 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13198 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E611 OF 2023  
SC RUTTO, J  
NOVEMBER 22, 2024**

**BETWEEN**

**PARSAKEI JONAH ORUMOI ..... 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 he avers that vide a letter 17<sup>th</sup> May 2022, upon a Performance Appraisal Tool dated 12<sup>th</sup> May 2022, and upon the request and recommendation for extension of employment contract, the 2<sup>nd</sup> Respondent willfully extended his contract for two years with effect from 1<sup>st</sup> July 2022 as the Director Revenue. The contract was expected to lapse on 1<sup>st</sup> July 2024.
2. He continued serving the Respondents with zeal as he carried out his duties with utmost professionalism, faithfulness and diligence thereby fulfilling the demands of his job.
3. The Claimant further avers that he was receiving his monthly salary and other benefits until January 2023 when the 1<sup>st</sup> Respondent stopped paying him salary despite his contract subsisting. He wrote a letter dated 1<sup>st</sup> February 2023 to the 2<sup>nd</sup> Respondent enquiring the circumstances and reasons that led to the illegitimate process of dismissal.



4. Having received no response from the 3<sup>rd</sup> Respondent, he sought clarification over the same by lodging a complaint dated 28<sup>th</sup> March 2023 with the county labour office. However, the Respondents blatantly refused and or ignored to give an explanation to his concerns.
5. In the Claimant's view, this was in blatant violation of the Respondent's Employment Policy. He further believes that he was constructively and unfairly dismissed.
6. Consequently, the Claimant has asked the Court to grant him a number of reliefs being payment of salary for 18 months from January 2023 to 1<sup>st</sup> July 2024, gratuity, severance pay, compensation for unfair treatment in accordance with Section 49 of the Employment Act, compensation for traumatic experience and emotional distress, as well as costs of the suit plus interest.
7. 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.
8. 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.
9. In response to the preliminary objection, the Claimant filed a Replying Affidavit dated 23<sup>rd</sup> September 2024 in which he avers that no official decision has been rendered by the 2<sup>nd</sup> Respondent regarding his employment status. That therefore, there is nothing to appeal against. He is advised by his advocates on record whose advice he believes to be true that he cannot appeal to the Public Service Commission without a formal decision being given by the 2<sup>nd</sup> Respondent.
10. 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**

11. 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.
12. The Respondents have further contended that the Claimant has not demonstrated to this Court that they indeed exhausted the existing statutory mechanism.
13. 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 his employment hence he could not appeal to the Public Service Commission. That his 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

14. 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.
15. 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 his part, the Claimant has contended that he is yet to receive a decision from the 2<sup>nd</sup> Respondent to allow him appeal to the Public Service Commission.
16. 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.
17. The facts of this case as pleaded by the Claimant is that the 2<sup>nd</sup> Respondent stopped paying his monthly salary and other benefits in January 2023 while his contract was still subsisting. That subsequently, he wrote a letter to the 2<sup>nd</sup> Respondent inquiring on the circumstances and reasons leading to what he termed as an illegitimate process of termination. He did not receive a response. He also lodged a complaint with the county labour office but the 2<sup>nd</sup> Respondent was non-responsive.
18. It is this Court's considered view that the stoppage of the Claimant's salary was in itself a decision that was appealable to the Public Service Commission. It did not matter that the decision was not in writing.
19. As a matter of fact, the Claimant avers that he was constructively and unfairly dismissed. This means that from his standpoint, the 2<sup>nd</sup> Respondent's actions amount to constructive dismissal. Going by the Claimant's version of events, it follows that there is a decision that is appealable to the Public Service Commission.
20. Therefore, it is not accurate for the Claimant to state that he did not receive any decision from the 2<sup>nd</sup> Respondent to allow him appeal to the Public Service Commission. The Respondent's conduct was sufficient to make him move the Public Service Commission just as he has moved this Court.
21. 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.
22. 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....
23. 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.



24. Needless to say, the Claimant has moved this Court prematurely as it is evident that he is yet to exhaust the dispute resolution mechanisms established under the Constitution, the County Governments Act and the Public Service Commission Act.

25. As was held by the Court of Appeal in the case of Secretary, County Public Service Board & another v Hulbhai 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.”

26. 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.

27. 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.”

28. 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**

