



**Parangiro v Turkana County Government Public Service Board & 2 others  
(Petition E027 of 2022) [2023] KEELRC 23 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 23 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E027 OF 2022  
NJ ABUODHA, J  
JANUARY 20, 2023**

**BETWEEN**

**ROSEMARY CHINYEI PARANGIRO ..... PETITIONER**

**AND**

**TURKANA COUNTY GOVERNMENT PUBLIC SERVICE BOARD .... 1<sup>ST</sup>  
RESPONDENT**

**THE COUNTY SECRETARY TURKANA COUNTY GOVERNMENT .... 2<sup>ND</sup>  
RESPONDENT**

**THE TURKANA COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The respondent herein through counsel raised a preliminary objection to the effect that:
  - a) That by the dint of provisions of section 77 (1, 2, 3) of the *County Governments Act* 2012, this honourable court does not have jurisdiction to hear this matter.
  - b) That the suit is based on a decision by the County Public Service Board of Turkana and as such any action lies with the Public Service Commission.
  - c) That due to the fact that the decision that the petitioner/applicant based her subject matter was made by the County Public Service Board which therefore grants the jurisdiction to the Public Service Commission.
2. Section 77 of *County Government Act* provides:
  - 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.

- 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) recruitment, selection, appointment and qualifications attached to any office; remuneration and terms and conditions of service; disciplinary control; national values and principles of governance, under article 10, and values and principles of public service under article 232 of the *Constitution*; retirement and other removal from service; pension benefits, gratuity and any other terminal benefits; or any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.
  - b) An appeal under subsection (1) shall be in writing and made within ninety days after the date of the decision, but the Commission may entertain an appeal later if, in the opinion of the Commission, the circumstances warrant it.

3. The petitioner/applicant in her affidavit in support of the application stated inter alia that by a letter dated January 7, 2022 the 3<sup>rd</sup> respondent issued her with a contract to serve in its public service from January 2, 2022 for a duration of two years expiring on January 2, 2021. She was serving as a chief officer. The applicant further stated that upon the just concluded general elections the respondent by a letter dated October 21, 2022 transferred her to what she described as a dingy nondescript office and failed to allocate her any assignments. The applicant consequently applied for leave and was allowed to proceed on leave by a letter dated November 17, 2022. While on leave the applicant was notified of her immediate summary termination of her employment without stating any grounds for the termination.

4. Section 77 of the *County Government Act* provides for an internal appeals mechanism which a party aggrieved by any decision of County Public Service Board in exercise of its disciplinary control against any County Public Officer, could appeal. This is to Public Service Commission.

5. The wording of the section is couched in non-mandatory terms – it uses the permissive “may” which implies that the appeal to Public Service Commission is not mandatory.

6. While this may be the unavoidable interpretation of the section, the exhaustion principle requires that for good order, where a statute provides for internal dispute resolution mechanism, it is desirable, whether such resort is mandatory or not, to exhaust the internal process before invoking the jurisdiction of the court. This was well stated in the case of *William Odhiambo Ramogi & 3 others v Attorney & 4 others [2020] eKLR* where the court observed:

“The exhaustion doctrine serves the purpose of ensuring that there is postponement of judicial consideration of a matter to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place of resolution outside the court.”

7. The court however is alive to the fact that there could be compelling circumstances which make it impractical to insist on the exhaustion principle. For instance the PSC does not have power to issue injunction or conservatory orders hence in cases where the subject matter of appeal to PSC under section 77 has a real risk of significantly changing or dissipating, it would be unreasonable to insist on



the exhaustion principle. This perhaps could be the logic behind the framing of the section permissive terms.

8. The petitioner herein is contesting the termination of her service. The respondents in their affidavit in response to the application and petition have justified their decision. The matter therefore falls within the scope of ordinary employment dispute. The petition does not therefore present a compelling scenario to justify the by passing of the appeal process to Public Service Commission as provided under section 77 of the [County Government Act](#). The court still retains the residuary power to upset if, so persuaded, any decision the PSC may ultimately make and issue appropriate orders in the interest of justice.
9. To this extent the court upholds the objection by the respondent that this petition has been prematurely filed before the court and hereby orders the same stayed pending the exhaustion of the appeals process provided for under section 77 of the [County Government Act](#). It is up to the petitioner to file such appeal and seek to be heard expeditiously.
10. The consequence of this order is that the interim order issued on December 1, 2022 and varied on December 19, 2022 is hereby discharged.
11. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 20<sup>TH</sup> DAY OF JANUARY, 2023**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

