



**Orori v Public Service Board, Kisii & 2 others (Cause E049 of 2022)
[2023] KEELRC 260 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 260 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E049 OF 2022
S RADIDO, J
FEBRUARY 8, 2023**

BETWEEN

ZACHARY BOSIRE ORORI CLAIMANT

AND

PUBLIC SERVICE BOARD, KISII 1ST RESPONDENT

**COUNTY SECRETARY AND HEAD OF THE PUBLIC SERVICE, KISII
COUNTY GOVERNMENT' 2ND RESPONDENT**

KISII COUNTY GOVERNMENT' 3RD RESPONDENT

RULING

1. The claimant was employed as a Personal Assistant to the Governor through a letter dated 2 January 2018 for a period of 3 years. On 4 December 2020, the contract was extended for a further 3 years.
2. However, on 5 September 2022, the County Secretary notified the Claimant that pursuant to sections 74 and 75 of the [County Governments Act](#), the contract had been varied and had ended on 31 August 2022.
3. The claimant was aggrieved and on 24 November 2022, he sued the respondents alleging unfair termination of employment.
4. On 7 December 2022, the respondents filed a notice of preliminary objection contending that:
 - i. The claimant/applicant is in contravention of section 70(1) of the [County Governments Act, 2012](#).
 - ii. The respondents are well within their mandate as espoused under section 74 of the [County Governments Act, 2012](#).
 - iii. The matter be dismissed with costs to the claimant/applicant (sic).



5. When the parties appeared in court on 19 December 2022, the court directed the respondents to file and serve an amended preliminary objection together with submissions before 25 January 2023.
6. The claimant was ordered to file and serve his submissions before 2 February 2023.
7. The parties did not comply with the timelines and instead the respondents filed submissions on 2 February 2023. The claimant filed his submissions on 7 February 2023.
8. In the submissions, the respondents called to their aid article 234(2)(i) of the Constitution as read with section 77 of the County Governments Act and sections 85, 86 and 87(2) of the Public Service Commission Act.
9. The legal provisions clothe the Public Service Commission with appellate jurisdiction over certain decisions concerning a county public service.
10. The court has looked at the pleadings and come to the conclusion that it has no first instance jurisdiction over the dispute by virtue of section 77 of the County Governments Act as read with sections 85, 86 and 87(2) of the Public Service Commission Act.
11. In reviewing the contract and removing the Claimant from office, the respondents were exercising or purporting to exercise powers granted by the County Governments Act.
12. In this regard, article 234(2)(i) of the Constitution as read with section 77 of the County Governments Act and sections 85, 86, and 87 of the Public Service Commission Act has given the Public Service Commission first instance jurisdiction where a person feels aggrieved with the exercise of the disciplinary control (or removal) powers by or on behalf of a county public service board.
13. Section 77(1) & (2) of the County Governments Act empowers the Public Service Commission to entertain appeals from any person dissatisfied with the exercise of powers in respect to removal from a county public service.
14. The Court of Appeal had occasion to consider the implication of section 77 of the County Governments Act in Secretary, County Public Service Board and another v Hulbban Gedi Abdille [2017] eKLR where it stated 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. On the other hand, section 87(2) of the Public Service Commission Act, 2017 expressly outlaws first-instance court proceedings before the appellate procedures have been exhausted.
16. The claimant herein did not exhaust the appellate procedures.

Conclusion and Orders

17. The court will, therefore, decline jurisdiction.
18. The statement of claim lodged with the court on November 24, 2022 is struck out. No order on costs.



DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF FEBRUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For claimant Bosire Gichana & Co. Advocates

For respondent County Attorney, Kisii

Court Assistant Chrispo Aura

