



Kiage v County Public Service Board, Kisii & 2 others (Cause E048 of 2022) [2023] KEELRC 561 (KLR) (8 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 561 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E048 OF 2022
S RADIDO, J
MARCH 8, 2023

BETWEEN

JULIUS NYAMWEYA KIAGE CLAIMANT

AND

COUNTY PUBLIC SERVICE BOARD, KISII 1ST RESPONDENT

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

KISII COUNTY GOVERNMENT 3RD RESPONDENT

RULING

1. Julius Nyamweya Kiage (the Claimant) was appointed as a Personal Assistant to the Deputy Governor, Kisii County on or around 22 April 2013. The Claimant was re-designated as an Administrative Officer in 2014.
2. On 5 January 2015, the County Secretary notified the Claimant of the termination of his contract.
3. However, the Claimant was reinstated in August 2017 but on a 2-year contract.
4. When the contract lapsed, it was renewed but as an Assistant Director, Administration. The contract was again renewed on or around 7 July 2021 and the Claimant was deployed to the Department of Trade, Tourism and Industry as Deputy Director, Administration. The contract was to lapse on 30 June 2023.
5. On 5 September 2022, the County Secretary notified the Claimant that the contract had been varied to end on 31 August 2022. The Claimant was instructed to hand-over.
6. The Claimant was aggrieved and he sued the Respondents on 23 November 2022, alleging unfair termination of employment and breach of contract.



7. On 1 February 2023, the Respondents raised a Notice of Preliminary Objection contending:

Take notice that the Respondents herein shall raise a Preliminary Objection on points of law at the first instance to be determined in limine on grounds that this Honourable Court is divested of jurisdiction since the Claim has been instituted contrary to the express provisions of section 77 of the [County Governments Act](#) No. 17 of 2012 & section 87(2) of the [Public Service Commission Act](#), 2017 as read with section 10 of the [Public Service Commission \(County Appeals Procedures\) Regulations of 2022](#).

8. On 2 February 2023, the Court directed the parties to file and exchange submissions on the Preliminary Objection (the Respondents had filed their submissions on 1 February 2023). The Claimant did not file submissions.

9. The Court has looked at the pleadings, Notice of Preliminary Objection and the submissions, 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](#).

10. When taking the decision to terminate the Claimant's contract, the Respondents were exercising powers or purported powers reposed on them by the [County Governments Act](#).

11. In this regard, Article 234(2)(i) of the Constitution as read with section 77(1) and (2) 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.

12. 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 of a person from a county public service.

13. 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 Ar vs Hulbhan 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.

14. 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.

15. What is clear to this Court from the aforecited legal provisions is that the jurisdiction of the Court is a deferred jurisdiction which should be invoked after the Public Service Commission, a constitutional body has dealt and determined the appeal, if any, lodged before it.

16. The Claimant herein did not exhaust the appellate procedures.



Conclusion and Orders

17. The Court declines first instance jurisdiction. The Cause is struck out with no order on costs.

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

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Bosire Gichana & Co. Advocates

For Respondents County Attorney, County Attorney's Office, Kisii

Court Assistant Chrispo Aura

