



Keronei v County Government of Uasin Gishu & another (Cause 37 of 2020) [2023] KEELRC 958 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 958 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 37 OF 2020
NJ ABUODHA, J
APRIL 28, 2023

BETWEEN

JOSEPH KIPKEMEI KERONEI CLAIMANT

AND

COUNTY GOVERNMENT OF UASIN GISHU 1ST RESPONDENT

COUNTY GOVERNMENT OF UASIN GISHU PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. On July 13, 2022 when this matter came up for mention, Mr Mugambi for the Respondent informed the Court that his client had been reinstated pursuant to the decision of the Public Service Commission made on June 20, 2022.
2. The Court thus directed that in view of the developments the parties do confer and discuss any outstanding issues and possibly come up with amicable settlement.
3. When the matter was set for mention on the date scheduled, the parties informed the Court that they were unable to agree on costs and Mr Mugambi proceeded to ask the Court to award the Claimant costs. The Court however directed the Claimant's Counsel to file a formal application for consideration on merit. This gave rise to the present application in which the Applicant seeks more than award costs. The Claimant additionally seeks assessment of damages allegedly suffered by the Claimant owing to the actions of the Respondent.
4. In support for the prayers sought, Counsel for the Claimant Mr Mugambi submitted in the main that on September 10, 2020, the Claimant filed the suit the herein seeking declarations against the acts of the Respondent which included reinstatement, monetary relief and costs. While the claim was pending, the Public Service Commission through a letter dated June 15, 2020 set aside its earlier decision disallowing the Claimants appeal to it. The Public Service Commission further set aside the



- decision of the Respondent not reinstate the Claimant to County Public Service upon resignation as Chief Officer Health Services. Public Service Commission consequently ordered and directed the Respondent to reinstate the Applicant back to the County Public Service without any loss of any attendant benefit, to the position the Claimant held prior to being seconded to the Department of Health of Services.
5. The Respondent was further ordered to pay the Claimant all his salaries and allowances from the date of lodging his request of re-deployment upon his resignation from the position of Chief Officer Health Services until reinstatement and redeployment upon his resignation from the position of Chief Officer Health Services until reinstatement and deployment.
 6. According to the Counsel for the Claimant the Respondent duly complied with these directives of the Public Service Commission. Counsel therefore contended that complying with the directives of the Public Service Commission was an act of admission of the Claimant's claim herein hence the Claimant was entitled to damages which he urged the Court to assess.
 7. In support of the damages Counsel submitted that as result of the Respondent's actions now impugned by the Public Service Commission, he got negatively listed with CRB as he was unable to service his loan facility with KCB. The Claimant further alleged that he lost reputation in the eyes of the general public and underwent psychological torture and his family was similarly affected. Counsel thus submitted that their client as a consequence of the loss, suffered due to the Respondent's action. The Claimant was therefore entitled to damages.
 8. The Respondent on the other had submitted that the application was untenable. First because the Applicant sought substantive and final prayers through an application despite the fact that the main suit was pending. These damages according to Mr Mwangi for the Respondent were similar to those sought in the main suit. According to Counsel, damages were final and substantive prayers which required to be assessed. The assessment of whether the Claimant suffered the alleged loss to warrant an award of damages required that parties were heard at a full trial.
 9. Mr. Mwangi further submitted that the Claimant through his advocate informed the Court that he had been reinstated pursuant to the decision of the Public Service Commission which rendered the present suit moot as it had been overtaken by events.
 10. Counsel further submitted that Section 99 of the *County Government Act* and Section 85 of the *Public Service Commission Act* provided for a dispute resolution forum that ought to be exhausted prior to approaching the Court with respect to decisions of the 2nd Respondent. The Claimant was well aware of the dispute resolution mechanism yet filed parallel proceedings before the Court and Public Service Commission which amounted to forum shopping hence an abuse of the Court process. Mr Mwangi wondered what event had happened to warrant such costs. According to Counsel, the 2nd respondent's action in reinstating the claimant never amounted to admission of liability in the main suit as the claimant was reinstated in compliance with the PSC's decision dated June 20, 2022.
 11. Section 74 of the *Public Service Commission Act* provides that any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under the Act may appeal to the Commission.
 12. Subsection (2) of the said Act further provides that such an appeal shall be in writing within ninety days for the decision appealed against.



13. Section 87 of the same Act provides that a person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear appeals from County Government public service unless the procedure provided for under the Act has been exhausted.
14. It is important to note that whereas an appeal to the Commission is optional by using the words “may appeal” the filing of Court proceeding over decisions of County Public Service prior to exhaustion of procedures provided for under the Act is prohibited by the use of the words “shall not file any legal proceedings”.
15. The Claimant herein filed the present proceedings prior to exhaustion of procedures set out in the *Public Service Commission Act* which included appeal and review. The Court however holds the view that the crafting in mandatory terms of the provisions of Section 87 does not render a suit filed contrary to the provisions of the section void.
16. This Court’s jurisdiction is derived from the *Constitution* and an absolute ouster of its jurisdiction prior to exhausting provisions of the *Public Service Commission Act* may in certain situations, occasion injustice, especially in cases of urgency where the substratum of the suit may be lost. The Court in such instances reserve the right to stay such suit pending the exhaustion of the dispute resolution mechanisms under the *Public Service Commission Act*.
17. The Court has carefully considered this matter and is not persuaded that it disclosed exceptional circumstances to warrant bypassing the mandatory provisions of Section 87 of the Public Service Act. In any event the Claimant herein concurrently invoked the dispute resolution mechanism under the *Public Service Commission Act* and jurisdiction of the Court.
18. The decision of the Public Service came ahead of the hearing and determination of this suit by the Court and both the Claimant and the 2nd Respondent confirmed that the 2nd Respondents had complied with the decision of the Public Service Commission.
19. Further, Counsel for the Claimant as noted at the some point earlier in this ruling, informed the Court that the only pending issue was on costs of the suit. I directed the parties to amicably discuss the issue of costs and possibly agree and if not possible, the Claimant was to move the Court through a formal application to enable the Court render its merit ruling on the application. The direction gave rise to the present application where in addition to costs, the Claimant is asking the Court to assess damages on the presumption that the 2nd Respondent by complying with the decision of the Public Service Commission had in a sense admitted the claims in this suit.
20. The decision or directions given by Public Service Commission in exercise of its powers under the Act are not binding and a party is free to challenge the same before the Court. They do not prevent a party who is not satisfied from litigating on the same facts before the Court. The only requirement is that being internal dispute resolution mechanisms, an aggrieved party is required to exhaust them before invoking the jurisdiction of the Court.
21. The Court has looked at the prayers sought in the Motion herein and the supporting affidavit and it seems to raise new claims from those sought in the main claim. They are in nature special damages which must be pleaded and strictly proved. Evidence would need to be led in an oral hearing to prove them. This cannot be possible through an interlocutory application supported by affidavit evidence.
22. The Motion before me and the prayers sought is in a sense a substantive suit. It deviates from the prayers in the main suit which have been essentially and substantially addressed by the Public Service Commission’s decision and honoured by the 2nd Respondent.



23. From the foregoing, the Court finds and holds that the motion as filed is incompetent as it seeks orders only capable of being granted upon a merit hearing and not on an interlocutory application. The same is therefore struck out with costs.

24. It is ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 28TH DAY OF APRIL 2023

ABUODHA JORUM NELSON

JUDGE

In the presence of:-

.....for the Claimant

.....for the Respondent

