



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bore & 2 others v County Government of Nyamira; Makonge (Interested Party)  
(Petition E004 of 2023) [2023] KEELRC 1281 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1281 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**PETITION E004 OF 2023**  
**S RADIDO, J**  
**MAY 24, 2023**  
**(ORIGINALLY KERICHO PETITION NO. E001 OF 2021)**  
**IN THE MATTER OF ARTICLES 23, 27, 28, 29,**  
**41 AND 47 OF THE**  
**CONSTITUTION OF**  
**KENYA, 2010**  
**AND**  
**IN THE MATTER OF THE CONSTITUTION OF**  
**KENYA (PROTECTION OF**  
**RIGHTS AND**  
**FUNDAMENTAL**  
**FREEDOMS) PRACTICE**  
**AND PROCEDURE RULES,**  
**2013**  
**AND**  
**IN THE MATTER OF SECTIONS 5, 44, 45, 46,**  
**49 AND 50 OF THE**  
**EMPLOYMENT ACT NO.**  
**11 OF 2007**  
**AND**  
**IN THE MATTER OF VIOLATION AND**  
**THREATENED**  
**VIOLATION OF**



**FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER  
(INTER ALIA) ARTICLES  
27, 28, 29, 41 AND 47  
OF THE CONSTITUTION  
OF KENYA, 2010  
BETWEEN**

**BETWEEN**

**WINNIE CHEPKEMOI BORE ..... 1<sup>ST</sup> PETITIONER  
NYAMOTA FRED NYAKANGO ..... 2<sup>ND</sup> PETITIONER  
KIPKOECH JOSHUA ..... 3<sup>RD</sup> PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NYAMIRA ..... RESPONDENT**

**AND**

**PAUL MAKONGE ..... INTERESTED PARTY**

**RULING**

1. Winnie Chepkemoi Bore, Nyamota Fred Nyakango and Kipkoech Joshua (the Petitioners) sued the County Government of Nyamira (Respondent) on January 30, 2023, contending that the Respondent unfairly terminated their employment contracts on an undisclosed date.
2. Filed with the Petition was a Motion under a certificate of urgency.
3. The Court directed the Petitioners to serve the Motion for inter-partes hearing on February 13, 2023. The Petitioners failed to attend the hearing and the Motion was dismissed.
4. Upon the dismissal, the Petitioners filed another Motion seeking similar orders. The Court directed that the Motion and Petition be heard together and that service be effected ahead of the giving of further directions on March 27, 2023 (the Respondent filed a Memorandum of Appearance on the said date but did not attend the virtual session).
5. On March 27, 2023, the Court directed the parties to address whether it had jurisdiction in light of Article 2343(2)(i) of the Constitution as read with section 77 of the County Governments Act and section 87(2) of the Public Service Commission Act.
6. Despite the directions, the Petitioners' submissions were not on record by the agreed timeline of April 14, 2023.
7. Nevertheless, the Court will proceed to determine whether it has jurisdiction.



## **Jurisdiction**

8. The cause of action advanced by the Petitioners is unfair termination of employment by the Respondent on a date which is not disclosed.
9. From the pleadings, it is not in doubt that the Petitioners were employees within the county public service of Nyamira.
10. By dint of Article 234(2)(i) of the Constitution as read with section 77(1) and (2) of the County Governments Act and section 87(2) of the Public Service Commission Service Act, the Petitioners first port of call should have been through an appeal to the Public Service Commission of Kenya.
11. Since the legal framework has given the Public Service Commission the mandate to deal with appeals from decisions of a county public service board or the county government with respect to disciplinary control or other removal from service, the Court's jurisdiction cannot be invoked unless and until the exhaustion of the appellate jurisdiction of the Public Service Commission.
12. 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 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 instance.

13. 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.
14. There is nothing on record to suggest the Petitioners exhausted the appellate procedures aforesaid.

## **Conclusion and Orders**

15. In consideration of the foregoing, the Court declines jurisdiction.
16. The Petition is struck out with no orders on costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 24<sup>TH</sup> DAY OF MAY 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

**For Petitioner Chege & Sang Co Advocates**

**For Respondents County Attorney, County of Nyamira**

**Court Assistant Chrispo Aura**

