



**Hussein & 4 others (Suing on their Behalf and all other Aggrieved Employees)
v Garissa County Public Service Board & 4 others (Constitutional Petition
E205 of 2022) [2023] KEELRC 1500 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1500 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E205 OF 2022**

**B ONGAYA, J
JUNE 22, 2023**

BETWEEN

**AHMED ABDI HUSSEIN 1ST PETITIONER
ABDI HIRSI FARAH 2ND PETITIONER
HUSSEIN ABDI AHMED 3RD PETITIONER
HASSAN RASHID AHMED 4TH PETITIONER
AHMEDRASHID KARIYOW ABDI 5TH PETITIONER
SUING ON THEIR BEHALF AND ALL OTHER AGGRIEVED EMPLOYEES**

AND

**THE GARISSA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT
THE COUNTY GOVERNMENT OF GARISSA 2ND RESPONDENT
THE GOVERNOR, COUNTY GOVERNMENT OF GARISSA 3RD
RESPONDENT
THE COUNTY SECRETARY, GARISSA COUNTY 4TH RESPONDENT
THE CONTROLLER OF BUDGET 5TH RESPONDENT**

RULING

1. The petitioners filed the petition and an application dated November 24, 2022 through Muma & Kanjama Advocates and Senior Counsel Charles Kanjama and Ms. Obure Advocate appeared in that behalf. The petitioners in the application prayed for interim conservatory orders directing the respondents to reinstate them together with other aggrieved employees to payroll and pay them



their salaries for the months of September and October 2022 and subsequent months without any unlawful deductions whatsoever and without any further delay. The petitioners also prayed for an interim conservatory order suspending and restraining the special taskforce gazetted under gazette notice 13820 dated November 8, 2022 from vetting employees, conducting hearings or compiling and submitting reports on the issue of Human Resource Audit at Garissa County. A further prayer for an interim conservatory order was that the respondents are restrained from implementing the report or recommendations of the special taskforce gazetted under gazette notice 13820 dated November 8, 2022. The petitioners also prayed for a conservatory interim order restraining the respondents from interfering with their duties as employed by the 1st respondent or advancement, retaliation, threats, reprisal or victimization on account of filing the petition and the application. The application was certified urgent on November 28, 2022, the respondents ordered to file a response in 4 days, and inter-partes hearing fixed for December 7, 2022. On 07.12.2022, after hearing the parties' advocates, the Court ordered:

- a. The 2nd, 3rd, and 4th respondents to file and serve replying affidavits by close of December 8, 2022.
 - b. Pending the inter partes hearing or further orders by the Court, the respondents by themselves, their officers or servants to reinstate the petitioners to the payroll and other aggrieved employees and to pay the petitioners (and other aggrieved employees as listed in prayers 3 to 8 of the exhibit to the supporting affidavit with like grievances) their salaries and allowances for the months of September, October and November, 2022 and subsequent months and without unlawful deductions whatsoever and without any further delays and not later than the next mention date.
 - c. Pending the inter partes hearing or further orders by the Court, the respondents by themselves, their officers or servants shall not take any adverse action or initiate disciplinary process or action or victimize, retaliate, threaten, or harass the petitioners or other aggrieved employees on account of filing the present petition and application.
 - d. Mention on December 14, 2022 at 9.30am or soon thereafter for further orders, directions and, recording a compromise as may be appropriate.
 - e. The County Governor for Garissa County Honourable Nathif J. Adan and County Secretary Mohamud Hassan Mursal to convene a meeting of all the parties towards negotiating a compromise of the present dispute with a view to recording a compromise at next mention; and, are responsible for compliance with today's Court orders.
 - f. Costs in the cause.
2. On December 13, 2022 the 2nd, 3rd and 4th respondents filed the application by the undated and unsigned notice of motion brought under section 1A, 1B, 3A, 80 of the *Civil Procedure Act*, Order 45 Rule 1(1) and Order 51(1) of the *Civil Procedure Rules*, Cap 21, Laws of Kenya and all other enabling provisions of law. They prayed for stay of execution of the orders for payment of petitioners and suspending or restraining the taskforce from vetting employees or conducting hearings and submitting reports on the issue of human resource audit at Garissa County (essentially order (b) in the foregoing paragraph and the Court observing that there had been no order by the Court in the order given on December 7, 2022 restraining the taskforce and as had been prayed for in the petitioner's initial application). The 2nd, 3rd and 4th respondents prayed that in the interim there be stay of orders (b) and (c) as given on December 7, 2022. They prayed that the said orders (b) and (c) be reviewed, varied or set aside and consequential thereto the Court orders:



- i. That the petitioners and all officers who were found to have been irregularly appointed salaries be stopped pending deliberation of their cases by the appointed Taskforce by the 3rd respondent in consultation with the 1st respondent herein according to the County Government Act.
- ii. That the special Taskforce gazetted under notice 13820 dated November 8, 2022 to continue vetting and conducting hearings of petitioners and other employees and submit comprehensive reports on the issue of Human Resource Audit at Garissa County.

The 2nd, 3rd, and 4th respondents prayed for costs of their application to be provided and for such order or further order as it may deem fair and just in the interest of justice and in the

3. The undated application for interim stay and review orders for the 2nd, 3rd, and 4th respondents was based upon the annexed supporting affidavit of Mohamud Hassan Mursal, the County Secretary being the 4th respondent, sworn on December 9, 2022, and upon the following grounds:
 - a. The Court gave the orders in issue on December 7, 2022.
 - b. The 2nd, 3rd, and 4th respondents are not in a position to reinstate the petitioners and similarly aggrieved employees to the payroll and pay salaries to the petitioners for the reason that the rationale for the human resource audit was to streamline the ballooning wage bill. A team was tasked by the State Department for Public Service to do human resource audit in the County and subsequently came up with conclusions and recommendations. The audit report found that ballooning wage bill was due to irregular promotions and service beyond retirement age of which the petitioners herein were cited as part of the irregular appointees.
 - c. The 3rd respondent, the Governor, in consultation with the State Department of Public Service formed a taskforce to deal with the issues raised in the audit report.
 - d. The taskforce issued letters to show cause to the petitioners and other employees to deal with the issues in the audit report. The audit was undertaken to ensure the wage bill was within the legal requirements.
 - e. That paying and reinstating the petitioners and other employees herein will lead to unjust enrichment since their appointment and recruitment is still questionable.
 - f. The Garissa County Government has shortage of funds and debts due to the exaggerated wage bill and various competing interests catered for in the budget.
 - g. It is cumbersome for the respondents to comply with the orders issued on 07.12.2022 now sought to be reviewed and set aside or varied as prayed for. If the application is not allowed, further and prejudicial orders might issue against the applicants, the three respondents.
4. The Petitioners moved to file an application by the notice of motion dated December 13, 2022. The application invoked sections 12 and 13 of the Employment and Labour Relations Court Act, Section 5 of the Judicature Act and the inherent power of the Court and all enabling provisions of the law. The application seeks the following reliefs:
 - a. Spent.
 - b. That the Honourable Court do issue summons directed to the Governor for Garissa County Honourable Nathif J. Adan and the County Secretary Mohamud Hassan Mursal to attend before this Court and show cause why they should not be held in contempt of Court for wilful disobedience of orders dated December 7, 2022.



- c. That the Honourable Court hereby finds the 2nd and 4th respondents in contempt of Court orders dated December 7, 2022 and they are liable to punishment for contempt of Court.
 - d. That upon citation for contempt, the aforesaid 2nd and 3rd respondents be sanctioned by committal to civil jail, sequestration of property, payment of a fine, suspension and removal from office and any further orders.
 - e. That the Honourable Court extends the orders issued on December 7, 2022 to include 226 aggrieved employees listed in page 4 to 13 on the exhibit in support of this application with like grievances
 - f. That the Court issues any other or further orders necessary to safeguard its authority, enforce its jurisdiction and advance the interests of justice.
 - g. That the costs of this application be provided for.
5. The application is based on the grounds in the motion and further supported by the 1st petitioner's supporting Affidavit sworn on December 13, 2023 as follows:
- a. That the Honourable Court did on December 7, 2022 give interim orders in the presence of respective parties' counsel on record for both petitioners and respondents.
 - b. That the counsel on record for the petitioners did proceed to extract the orders and served them upon all parties and their legal representatives.
 - c. The petitioners argue that on this basis the 3rd and 4th respondents deliberately disobeyed Court orders by failing to reinstate the petitioners together with other aggrieved employees and further failed to pay their September, October and November salaries.
 - d. The terms of the order were clear and unambiguous and that the 3rd and 4th respondents had proper notice of the same decided to flaunt the orders of the Honourable Court.
 - e. That the 3rd and 4th respondents were bound to obey the Court orders and therefore should be held in contempt of the Court orders for non-compliance of the Court orders dated December 7, 2022.
6. The contempt application dated December 13, 2022 was opposed by the replying affidavit of the 3rd respondent Nathif Jama Adam, the Governor for Garissa County. He stated and urged as follows:
- a. He was elected Governor on August 9, 2022. He took publicly an oath of office on August 20, 2022 to protect interests of the people of Garissa. As he took over office service delivery in the County had collapsed and lacking in basic needs such as water, electricity, and medical supplies at the Garissa Provincial General Hospital. The outstanding bills were high such as Kshs. 504, 000, 000.00 to KRA; Kshs. 92, 000,000.00 to KEMSA; Kshs. 78, 000, 000.00 to KPLC. KRA had notify the Treasury not to release funds to the County Government.
 - b. The assessment established that the County Wage Bill was over 60% disproportionate to the County national exchequer release.
 - c. Under Article 175(b) of the *Constitution*, the county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively. The county is poor and marginalised and it has no industries, sea ports or tourist sites. It has no other sources of revenue except the appropriation from national exchequer.



- d. Under the *Public Finance Management (County Governments) Regulations*, Regulation 25(1) (b) caps the ceiling on County Government expenditure on wages and benefits at 35% of the total county revenues. The county spent ¾ of its revenues on wage bill and very little on development. The office of Controller of Budget had severally flagged off the untenable wage bill and the outgoing regime had disregarded the advisories.
- e. The 1st respondent was requested to cooperate and get involved in cleaning up of the county payroll by weeding out ghost workers but the 1st respondent neglected to do so.
- f. As the ultimate person responsible for delivery of service in the county, he engaged the State Department for Public Service in the National Government to undertake a Human Resource Audit for the period 2017 – 2022 with a view of streamlining the ballooning wage bill. The audit returned that in 2017 – 2022 the County Government of Garissa appointed 1, 315 staff without following the right procedure as per the County Government Act. Further, it was found that appointment of officers was done by officers not authorised by law nor delegated to by the Board. It was recommended the county government takes action to deal with all cases of the irregular appointments.
- g. The instructions to the County Secretary by the Governor were appropriate action be taken and show cause letters were issued by the County Secretary to all affected staff to provide information on their recruitment such as job adverts, copies of application letters, the invitation for interviews, testimonials, and appointment letters within 14 days.
- h. He is aware that the 1st respondent is established under section 57 of the *County Governments Act* with powers per section 59 of the *Act* including recruitment, promotions, disciplinary control, establishment and abolition of offices in the county public service. The County Secretary is the Head of the county public service per section 44 of the *Act* and the County Secretary works closely with the County Public Service Board, the 1st respondent. The 1st respondent failed to deliver on its roles per the statutory provisions including failure to issue annual reports by December of every year for the years 2019 and 2020. For the reported years, the employees reportedly employed are fewer than the ones verified in the verification report.
- i. By letter dated March 14, 2020 the 1st respondent revoked all appointments that had been made in 2018, 2018 and 2020 and further revoked delegated authority that had been given to the County Government at the time. If the employment was revoked, then the same employees cannot be before the Court as employees of the same County Government.
- j. The Court's orders seem to have been issued in vain and in complete non-disclosure of material facts and is prejudicial and unfair to require the 2nd and 3rd respondents to be asked to comply with such orders. The orders appear to be based upon a verification exercise undertaken by the 1st respondent and the Court's discretion should not be misused by the petitioners for the Court to legitimize a fraudulent process that dates back to 2019.
- k. He denied that he was in contempt of the Court orders and had in fact complied by paying the salaries for October as per the Court's direction. He had not undermined the Court's authority and he was a firm believer in the rule of law and fidelity to the Constitution.
- l. The orders should be set aside. The notice of motion dated December 13, 2022 be dismissed with costs as the threshold for one to be cited for contempt has not been established. The Court should find that the 1st, 2nd and 3rd respondents are not in contempt.



7. On December 14, 2022 the parties' advocates were present and the Court gave orders extending time for compliance with Court orders given on December 7, 2022, directing parties to file appropriate replying or further affidavits, and encouraging parties to consider and enter a compromise. The matter was fixed for mention on December 20, 2022 when, upon hearing the parties' advocates the Court allowed parties to continue in negotiations for compromise with a view of recording a consent on January 10, 2023 and interim orders were extended. On January 10, 2023 the interim orders were extended, parties were allowed more time to conclude the compromise and draft consent, mention on February 14, 2023, and further ordered, the 1st to 4th respondents to effect payments per the interim orders failing, the 3rd and 4th respondents must appear to show cause why they should not be committed to civil jail for failure to implement the order.
8. In the meantime, the 1st to 4th respondents had engaged in verification of staff and upon hearing parties' advocates on February 14, 2023, the Court ordered and directed as follows:
 - a. The 1st respondent's Counsel upon his own submission, to sign and file in Court the consent in issue by close of Thursday February 16, 2023.
 - b. The 1st respondent to conclude the employee audit and verification process and to file and serve its report by close of March 1, 2023.
 - c. Pending the filing and service of the report in (b) above, the respondents to take steps towards expeditious payment of salaries for November and December 2022 as well as January and February 2023 for genuine employees and not later than March 15, 2023.
 - d. Parties encouraged to compromise on all emerging issues after the filing and service of the report in (b) above with a view of recording a further consent as may be appropriate.
 - e. Mention on March 2, 2023 to confirm filing and service of the report and for adopting the consent or further orders as will be appropriate.
 - f. Parties encouraged to compromise the contempt application filed for the petitioners.
 - g. The 12 officers be paid October 2022 salary by close of February 17, 2023 failing reasons for the failure be filed and served by same date.
9. The case was listed on March 2, 2023 and upon hearing the parties' advocates the Court ordered:
 - a. The staff verification exercise report 2023 now on record is deemed duly filed and served and the affidavit of Secretary to the 1st respondent to be filed and served by close of March 10, 2023 exhibiting duly signed copy of the report.
 - b. As earlier directed, parties to convene with a view of addressing in good faith any issues emerging from the report.
 - c. The consent dated January 25, 2023 is hereby adopted as an order of the Court and to issue in terms as drawn accordingly.
 - d. Order (c) given on February 14, 2023 be complied with, with respect to the 942 genuine employees as per tabulation at page 19 of the 1st respondent's report and as per tabulated names of the concerned employees.
 - e. Any person not satisfied with the findings in the report to file an application for review with the 1st respondent by close of March 17, 2023 and the 1st respondent to make a decision thereon in good faith and per applicable law and service regulations or policies by April 25, 2023.



- f. Mention on March 23, 2023 at 9.30am or soon thereafter to confirm compliance with order (d) above and for further directions.
 - g. Parties encouraged to compromise the petition as may be just and appropriate.
10. The terms of the parties' consent (signed by counsel for petitioners, 1st respondent, and 2nd respondents on January 25, 2023) subject of the adoption order (c) as stated in the foregoing paragraph and signed on January 25, 2023 were as follows:
- I. That the County Government of Garissa shall pay the petitioners including the 365 people supporting the petition and all the affected persons their salaries for the month of October 2022 within 3 working days from the date of this consent.
 - II. That the Garissa County Public Service Board will within Forty-Five (45) days from the date of the consent carry out a verification exercise of the petitioners and all the affected employees and report the outcome to the Court. The board shall prepare the modalities for the verification and communicate the same to the parties. The verification shall be for the purpose of determining:
 - a. Whether the affected employees were duly employed by the 1st and 2nd respondent.
 - b. Whether the affected employees were duly deployed and reported to their duty stations and commenced work for the County Government of Garissa.
 - III. That the verification exercise shall not be used to victimize, intimidate, and retaliate to the petitioners or other affected employees on account of filing or supporting the petition.
 - IV. Two of the petitioners, having been verified to be lawfully employed by the 1st and 2nd respondent shall represent the other petitioners and affected employees during the verification exercise. The County Government shall also be represented by the County Secretary and County Human Resource Manager. The role of the representatives shall for purposes of the verification exercise be limited to that of an observer.
 - V. That the findings and report of the Garissa County Public Service Board shall be presented to the Court for its consideration and further directions.
 - VI. That immediately the report is finalised and produced in Court, the verified workers shall be paid salaries for November and December 2022 and all subsequent months within 14 days of the filing of the report in Court.
 - VII. In the event the Garissa County Public Service Board does not complete the verification exercise as per clause (II) of this consent, the affected employees will still be paid within 14 days of expiry of the period stipulated in clause (II).
 - VIII. In the event of failure of the respondents to implement the terms of the consent within the stipulated period, the 3rd and 4th respondents shall be summoned to show cause why they have not complied with orders of the Court and the consent, the petitioners will be at liberty to proceed with the application dated December 13, 2022.
11. On March 23, 2023 parties' advocates attended Court. The Court observed that they had failed to report a compromise. They were granted leave to apply, to file further affidavits, and urged to consider compromise. The previous orders on payment of salaries were extended. The case next came up on April 25, 2023 and the Court ordered that the preliminary objections, two contempt applications and the application dated April 17, 2023 for 2nd and 3rd respondents would be considered and determined



together. The Court directed parties to file respective submissions and authorities. The Court directed the 3rd and 4th respondents be cross-examined on their affidavits. They attended for that purpose on May 29, 2023. The Court extended the interim orders as in place on record on record for payment of salaries of persons verified by the 1st respondent as employees of the County Government of Garissa, until next mention or hearing date.

12. This ruling is on the two contempt applications, the preliminary objection for the 4th respondent, and the application dated April 17, 2023 for 2nd and 3rd respondents. The 1st contempt application is dated December 13, 2022. The 2nd one is the petitioners' notice of motion application dated March 28, 2023 seeking the following orders:
 - a. (spent).
 - b. (spent).
 - c. That the Honourable Court do issue summons directed to the Governor for Garissa County Honourable Nathif J Adan and County Secretary Mohamud Hassan Mursal to attend before the court and show cause why they should not be held in Contempt of Court for wilful and continued disobedience of orders dated December 14, 2022, January 10, 2023, January 26, 2023, February 14, 2023, March 2, 2023 and March 23, 2023 March 23, 2023.
 - d. That the Honourable court finds the 2nd, 3rd and 4th respondents in wilful and continued contempt of Court orders dated December 14, 2022, January 10, 2023, January 26, 2023, February 14, 2023, March 2, 2023 and March 23, 2023, and that they be liable for punishment for contempt of Court
 - e. That upon citation for contempt, the aforesaid 3rd and 4th Respondents be sanctioned by committal to civil jail, sequestration of property, payment of a fine, suspension and or removal from office and, or, any further orders.
 - f. (spent).
 - g. That pending hearing and determination of the petition a conservatory order be issued restraining the respondents by themselves, their servants and, or, agents or whomsoever acting on their behalf from hiring the 3000 casual workers or any other workers as indicated in the letter dated 20th February 2023 while the aggrieved employees verified by the 1st respondent and subject to this petition are paid their salaries from November 2022, December 2022, January 2023, February 2023 and March, 2023 and subsequent months.
 - h. That an order be issued that Governor for Garissa County Honourable Nathif J. Adan and County Secretary Mohamud Hassan Mursal are unfit to hold public office on account of failing to comply with the court orders dated December 14, 2022 December 14, 2022, January 10, 2023, January 26, 2023, February 14, 2023, March 2, 2023 and March 23, 2023.
 - i. That the Court issues any other or further orders necessary to safeguard its authority, enforce its jurisdiction and advance the interests of justice.
 - j. That the costs of this Application be provided for.
13. The application was based upon the supporting affidavit of Ahmed Abdi Hussein sworn on November 28, 2023 and upon the following grounds:
 - a. The Court gave all the orders subject of the contempt application. The order of December 7, 2022 was that salaries and allowances for September, October, November, and subsequent



months be paid to the petitioners and aggrieved employees and without unlawful deductions and without further delays and not later than December 14, 2022, the mention date. The orders to pay have been affirmed or extended in subsequent orders o10.01.2023, 26.01.2023, 14.02.2023, 02.03.2023 and 23.03.2023.

- b. The order of 02.03.2023 was that the verified employees be returned to payroll and salaries be paid and the order has not been complied with.
 - c. The 2nd, 3rd, and 4th respondents have disobeyed the orders. The disobedience and despise of the orders has been deliberate.
 - d. The 2nd, 3rd and 4th respondents have by the letter dated February 20, 2023 requested the 1st respondent for delegated authority to recruit 3,000 casuals and yet they state that they do not have money to pay genuine and verified employees which clearly shows bad faith and outright contempt of Court.
14. The 2nd, 3rd, and 4th respondents filed the application by the notice of motion dated April 17, 2023 through Abdiaziz and Company Advocates. The application was under sections 1A, 1B, 3A, 80 [Civil Procedure Act](#), Order 45 Rule 1(1) and Order 51 Rule 1 of the [Civil Procedure Rules](#) and all enabling provisions of law. They prayed for orders as follows:
- a. (spent).
 - b. That pending the hearing of the application, the Honourable Court be pleased to stay execution of the orders of December 7, 2022 and directions emanating from the implementation of the staff verification report dated March 1, 2023.
 - c. That pending the hearing and determination of the application, the Honourable Court be pleased to review, vary and set aside the orders granted on December 7, 2022 as enumerated in paragraphs 2 and 3 of the order and March 2, 2023 and as extended on March 23, 2023.
 - d. The Honourable Court be pleased to order for the striking out of the staff verification report dated March 1, 2023 from the record.
 - e. That the Honourable Court be pleased to grant any other orders that it deems mete and just.
 - f. That costs of the application be provided for.
15. The application was based upon the supporting affidavit of Mohamud Hassan Mursal, the County Secretary, and upon the following grounds:
- a. The Court gave the orders of December 7, 2022.
 - b. On March 2, 2023 the Court ordered and directed that the staff exercise report 2023 then on record as duly filed and served; the consent dated January 25, 2023 adopted as an order of the Court and to issue accordingly, and order 3 of February 14, 2023 be complied with respect to the genuine 942 employees as per tabulation of page 19 of the 1st respondent's report and as per tabulated names of the concerned employees. The effect is that the respondents are to pay salaries for November, 2022 to February 2022 of the 942 purportedly verified employees. the 2nd, 3rd and 4th respondents are not in a position to pay the salaries because the orders were obtained upon the material non-disclosure and misrepresentation and the subsequent verification process as ordered by the Court by a consent dated January 25, 2023 not carried in accordance with the said consent.



- c. The County Government's initial aim for human resource audit was to streamline an otherwise bloated wage bill filled by staff hired under the watch of the 1st respondent through a dubious process. The verification process found that the affected staff were hired by different quarters in the County Government not vested with authority to hire such as by the then Deputy County Secretary. The information shows that the 1st respondent omitted in its 2017, 2018, 2021 and 2022 reports to the County Assembly the recruitment of majority of the staff now affected.
- d. That paying and reinstating the affected petitioners and other affected employees herein will result in unjust enrichment since the recruitment of the officers was irregular and therefore null and void according to the 1st respondent's advisory in 2022. The Court should not approve a process marred with fraud and mala fide which cannot birth a legitimate result.
- e. The Court to pay an eye on discrepancies of the report.
- f. Paying the petitioners will deny the residents of Garissa the most needed services such as supply of medicines in the county dispensaries as about Kshs. 60, 000.00 will be paid out to the petitioners and the affected staff every month.
- g. The orders should therefore be reviewed.
- h. At all material time the petitioners and other affected employees have never been relieved off their duties and only investigations had commenced and cognisant that only the 1st respondent is the body authorised to hire and fire county employees. the orders should have issued after the petitioners and other affected employees had defended their positions.
- i. The 1st respondent undertook the verification exercise from January 23, 2023 to February 17, 2023. Per the consent between the parties the verification was to answer two issues namely whether the employees were duly employed by the county and then duly deployed. The report is disputed because employees were not asked how they were employed per terms of the Consent. There was no reference to the files to compare the appointment letters held by the petitioners and other aggrieved staff. The report says 1, 140 employees appeared for verification and 942 were verified as genuine but some staff related to the members of the 1st respondent never actually appeared. By letter dated April 17, 2020 the 1st respondent had protested about shambolic recruitment at the County Government.
- j. As per exhibit MHM 10 32 of the affected staff were members of a non –existent entity called county band. The 1st respondent had irregularly brought them to the payroll and then plucked them away but three of them have found their way back to the payroll.
- k. Per exhibit MHM-11 the verified staff are about 144 out of which 97 were appointed by the chair lady of the 1st respondent, 14 were appointed by the former County Secretary, and 3 by the former Deputy County secretary. There is no establishment of the positions of religious affairs officers in the County of Garissa and such appointments are suspect.
- l. Per exhibit MHM-12 the staff verified as recruited by the County Government for last five years contradict the reports by the 1st respondent to the County Assembly for years 2017, 2018, 2021 and 2022. For example, in 2018 the annual report dated 03,.01.2019 shows the 1st respondent filled only two positions of County Human Resource Director and his Deputy. However, the audit showed that several staff were recruited in the same year.
- m. The Court should protect public money in the sum of Kshs. 60,000,000.00 per month that would be paid out to the purported 942 verified staff.



16. The 1st respondent filed the further affidavit of Mohammed Sheikh Abdi (the CEO and Secretary of the 1st respondent) sworn on April 18, 2023. It states that the 1st respondent's verification from January 23, 2023 to February 18, 2023 required physical appearance of the employees of the 2nd respondent before the 1st respondent. From February 20, 2023 to March 1, 2023 the 1st respondent prepared the Staff Verification Exercise Report 2023 through analysis of the collected data. The report was adopted by the Court on February 14, 2023 and 942 members of staff were to be paid salaries. Per Court order the 1st respondent considered 145 request for review and 112 persons were further verified to be employees of the 2nd respondent. The full list of 1054 employees verified by the 1st respondent is exhibit ms-1.
17. The 4th respondent filed a further affidavit sworn on April 17, 2023 responding to the further affidavit of Mohammed Sheikh Abdi (the CEO and Secretary of the 1st respondent) sworn on April 18, 2023. it was stated that by consent dated January 25, 2023, parties consented that the 1st respondent undertakes the verification exercise. The other respondents were entitled to have representatives during the verification exercise. In undertaking verification, the 1st respondent was to abide by the Constitution, the County Governments Act, the Public Officer Ethics Act, and the Leadership and Integrity Act, and other laws ensuring justice and fairness. The 1st respondent formulated criteria to govern verification being non-existent positions; staff with suspected credentials; staff on EACC investigation list; staff with invalid documents; staff who are over 60 years of age; and contractual staff. The parameters were not observed at all. Some named staff over 60 years are part of the 942 verified as qualified to continue in service. Some in non-existed positions such as county band were in verified list. Some named officers who contested in August 2022 elections and expected to have resigned were in the verified list. The affidavit repeats evidence about letter dated April 17, 2020 revoking the 1st respondent's delegated powers on appointments and promotions by senior county officers and delegated decisions in that regard not to be implemented. However, 465 and a further 69 persons were appointed under the revoked delegated powers. Further, the affidavits repeated that the persons verified were at discrepancy with the reports to the County Assembly such as in 2018. It was urged as follows:
 - a. That the verification report filed in court and the affidavit dated March 13, 2023 are not in compliance with the orders of the Court dated January 10, 2023 and the consent dated May 25, 2023.
 - b. The verification report filed in Court and the affidavit dated March 13, 2023 be expunged from the records of the Court as they are a mockery of the Court's process.
 - c. That in the absence of a proper verification and a process that is compliant with the law, the orders of the Court on salary payments and reinstatements be vacated or set aside.
 - d. In the alternative to the above orders, the Court to order a more thorough independent court supervised verification of staff in question.
18. The 4th respondent filed a notice of preliminary objection dated April 24, 2023 through Manyonge Wanyama & Associates LLP. The petitioner raised a point of law that the petition is premature and incompetent upon the following grounds:
 - a. From the Petition, the Petitioners have a dispute concerning remuneration and terms and conditions of service at Garissa County Government.
 - b. Under Article 234 (2) (i) of the Constitution of Kenya, 2010 read with Section 77 of the County Governments Act, 2012 and Section 85 of the Public Service Commission Act, 2017, the dispute at paragraph 1 herein should be determined by the Public Service Commission in the first instance.



- c. The Petitioners have not exhausted the remedies in the Constitution and the relevant statutes at paragraph 2 herein.
19. Parties made both written and oral submissions. The Court has considered all the material on record and returns as follows.
20. To answer the 1st issue, the Court returns that the preliminary objection must fail as the petition is not premature upon the following grounds:
 - a. There is no dispute by the petitioners about their terms and conditions of service as alleged for the 4th respondent in the notice of preliminary objection. The dispute as it appears to the Court is that the petitioners and other aggrieved employees say they were hired by the 1st respondent to serve in 2nd respondent's public service. Their respective contracts of service are running and the respondents including the 4th respondent confirms that they are on duty but there are ongoing investigations, audit or verification about the regularity and validity of their employment. In the process, their respective grievance is that their monthly salaries and allowances have been withheld. They moved the Court for orders in the nature of specific performance, that the respondents honour their respective contracts of service by paying the agreed and prescribed monthly pay.
 - b. Now, as submitted for the petitioners, the 4th respondent has failed to show existence of a decision by the 1st respondent or any other authority in the County Government constituting a dispute of remuneration and terms and conditions of service that would render the petition premature. The preliminary objection must then collapse and the Court would dismiss it as unfounded at all.
21. To answer the 2nd issue, the Court finds that the 2nd, 3rd and 4th respondents are not in contempt of the orders given by the Court on December 7, 2023 and the orders subsequent thereto because of the following reasons:
 - a. As submitted for the petitioners the orders were served and as well as they were extended by the Court. The County Governor and the County Secretary confirmed that they were aware of the Court orders as initially given by the Court and then as extended from time to time.
 - b. The Court has elaborated the proceedings in the instant case and the orders made as the parties attended Court on various dates. By the parties own consent signed on January 25, 2023, it was agreed that the 1st respondent undertakes a verification exercise and only such employees found not to be ghosts and passing the verification exercise would be paid all the outstanding monthly salaries and further, continue to earn. The Court considers that the verification exercise then became a condition precedent to be satisfied prior to the petitioners being paid all the outstanding salaries.
 - c. Now, the verification exercise as far as the 1st respondent is concerned yielded 1054 employees verified by the 1st respondent as deserving payment. However, as per the elaborations by the County Secretary in the affidavits and as set out in this ruling, holes without a rebuttal on the part of the petitioners or the 1st respondent have been poked into the verification report. The dented report purporting to yield the 1054 employees verified as due for payment operates as a bar to finding that the 2nd, 3rd, and 4th respondents are liable in contempt of Court with respect to the order to pay which as at time of hearing the contempt applications, the duty to pay, by parties' own consent, was preconditioned on a valid verification of the petitioners and other affected employees.



- d. The Court thus considers that the contempt proceedings requiring establishment akin to a criminal proceeding on a standard beyond reasonable doubt and with due attention to mitigating factors and circumstances, the 2nd, 3rd and 4th respondents are found not guilty of deliberate disobedience of the Court orders in issue. The contempt applications will collapse.
22. To answer the 3rd issue, the Court finds that the application by the 2nd and 3rd respondents dated April 17, 2023 will fail as relates the prayers for review orders because of the following reasons:
- a. As already found by the Court, the parties by their own consent signed on January 25, 2023 made verification a precondition to the payments of salaries in issue. The order of December 7, 2022 stood varied accordingly. The parties must be bound accordingly.
- b. In any event, the prayers for review were for orders to be made pending the hearing and determination of the application and therefore, overtaken as at the findings after the inter partes hearing. The Court finds that the prayers for review were in that sense misconceived as they could not be granted after such inter partes hearing.
- c. Ground 1(b) in the notice of motion of motion suggests the Court made an interim conservatory order on December 7, 2022 relating to special taskforce gazetted under notice 13820 dated November 8, 2022 but which order appears not to have been made at all and the applicants were misconceived in that regard.
23. The 2nd and 3rd respondents prayed in the application dated April 17, 2023 that the staff verification report herein dated March 1, 2023 be struck out. The Court has already found that the 2nd, 3rd and 4th respondents have shown that report indeed suffered want of integrity. Accordingly, the Court finds that, pending the hearing and determination of the petition or further orders by the Court, the staff verification report 2023 herein with subsequent reviews thereto returning a total of 1054 employees verified as due for payment is struck out and the Court order adopting the same set aside upon the following conditions:
- a. The petitioners and the other aggrieved employees be subjected to an independent verification or audit process undertaken by the Public Service Commission in exercise of its Constitutional and statutory powers and functions at the instance and cost of the 2nd respondent as enabled by the 3rd and 4th respondents.
- b. The audit in (a) above be commenced forthwith to be completed by August 1, 2023 and all petitioners and the other aggrieved employees verified as valid employees of the 2nd respondent be paid all due outstanding monthly salary and allowances by September 1, 2023 failing interest to be payable thereon at court rates from September 1, 2023 till full payment.
- c. Until the verification or audit herein is completed and the report filed and served upon all the parties, the 1st, 2nd, 3rd and 4th respondents by themselves or by their agents are hereby prohibited from recruiting, appointing, or promoting any other persons to positions or cadres held by petitioners as employees.
- d. All parties shall cooperate by way of providing relevant documents or information and attending to enable the Commission undertake the verification and audit accordingly.
24. While making the finding in condition (c) in the foregoing paragraph, the court has considered a related prayer in the petitioners' application dated March 28, 2023 and it appears to the Court that ends of justice will be served accordingly.



25. The Court has considered the circumstances of the preliminary objection, the application for review and, the two contempt applications and returns that each party shall bear own costs of the attendant proceedings.

In conclusion, the two contempt applications for the petitioners, the preliminary objection for the 4th respondent, and the application dated April 17, 2023 for the 2nd and 3rd respondents are hereby determined with orders:

1. The 4th respondent's preliminary objection is hereby dismissed.
2. The two contempt applications for the petitioners are hereby dismissed but subject to order (3) as follows.
3. That pending the hearing and determination of the petition or further orders by the Court, the staff verification report 2023 herein with subsequent reviews thereto returning a total of 1054 employees verified as due for payment is struck out and the Court order adopting the same set aside upon the following conditions:
 - a. The petitioners and the other aggrieved employees be subjected to an independent verification or audit process undertaken by the Public Service Commission in exercise of its Constitutional and Statutory powers and functions at the instance and cost of the 2nd respondent as enabled by the 3rd and 4th respondents.
 - b. The verification or audit in (a) above be commenced forthwith to be completed by August 1, 2023 and all petitioners and the other aggrieved employees verified as valid employees of the 2nd respondent be paid all due outstanding monthly salary and allowances by September 1, 2023 failing interest to be payable thereon at court rates from September 1, 2023 till full payment.
 - c. Until the verification or audit herein is completed and the report filed and served upon all the parties, the 1st, 2nd, 3rd and 4th respondents by themselves or by their agents are hereby prohibited from recruiting, appointing, or promoting any other persons to positions or cadres held by petitioners as employees.
 - d. All parties herein shall cooperate by way of providing relevant documents or information and attending when called upon so as to enable the Commission undertake the verification and audit expeditiously and accordingly.
4. That each party shall bear own costs of the attendant proceedings for the two contempt applications for the petitioners, the preliminary objection for the 4th respondent, and the application dated April 17, 2023 for the 2nd and 3rd respondents.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 22ND JUNE, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

