



**Karuri v Nairobi City County Government & another (Cause  
1127 of 2018) [2023] KEELRC 1395 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1395 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1127 OF 2018  
MN NDUMA, J  
JUNE 8, 2023**

**BETWEEN**

**JEREMANO KAMAU KARURI ..... CLAIMANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI METROPOLITAN SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 2<sup>nd</sup> respondent filed Notice of Preliminary Objection to the suit dated August 17, 2022 to the effect that the suit is statute barred since the claimant was dismissed from employment on July 4, 2012 and that the suit was filed on July 4, 2018 more than three (3) years from the date the cause of action arose.
2. The record shows that the claimant appealed against the dismissal from service and the appeal was dismissed on September 18, 2014 on grounds that the appeal had no merit and that the appeal was filed out of time.
3. The decision of the refusal of appeal was communicated to the claimant vide a letter dated 1<sup>st</sup> March, 2018 in which the claimant was given leave to apply to the Public Service Commission for a review of the decision within (1) year.
4. The claimant made an application for review of the decision to dismiss him on March 26, 2018 and the Public Service Commission disallowed the application for review on April 4, 2018 and communicated the decision confirming the dismissal on May 8, 2018.
5. This Court and the Court of Appeal have time and again held that the appeal by Public Servants to the Public Service Commission upon receipt of an adverse decision is mandatory and that persons aggrieved by decisions of their employer in Public Service must exhaust the internal Appeal Procedures before filing suit before the Employment and Labour Relations Court.



6. In *Secretary, County Public Service Board and Another -vs- Hulbhai Gedi Abdullah* 2017 e KLR, it was held that:-

“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 only a 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. In terms of *Republic v National Environment Management Authority* (supra), we discern no exceptional circumstances in this appeal that would have warranted the bypassing of the statutory appellate process by the respondent. Her contention that she disregarded the appeal because it could not afford her an opportunity to question the procedure followed by the appellant is in our view, without basis because Section 77 has placed no fetter to the jurisdiction of the Public Service Commission. There is no requirement for instance that reasons for the decision be availed to an aggrieved party before he can prosecute an appeal before it. It does not also matter that an applicant in judicial review proceedings need not exhaust all other available remedies. The invocation of judicial review jurisdiction of the court was in the circumstances premature and uncalled for. The first ground of appeal therefore succeeds.”

7. Also in *Republic -vs- National Environment Management Authority Ex parte Sound Equipment Ltd.*, the Court of Appeal observed: -

“... Where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted and that in determining whether an exception should be made and judicial review granted, it is necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.”

6. Accordingly, the claimant became legally entitled to file suit upon conclusion of the mandatory statutory appellate and review procedure to the Public Service Commission on April 4, 2018.
7. The suit was filed on July 4, 2018, a few months from the date the mandatory internal process were concluded.
8. Accordingly, the suit did not fall foul to the provisions of Section 90 of the *Employment Act, 2007*.
9. The suit was filed within time and is not statute barred. The Preliminary Objection is dismissed with costs in the cause.
10. It is so ordered.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8<sup>TH</sup> DAY OF JUNE, 2023.**

**Mathews N. Nduma**

**Judge**

**Appearances**

Odukenya for Respondent/Objector



Claimant in person

Ekale – Court Assistant

