



**Kombo v Governor Lamu County & 2 others (Petition  
E003 of 2021) [2022] KEELRC 1407 (KLR) (29 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1407 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
PETITION E003 OF 2021**

**BOM MANANI, J**

**JUNE 29, 2022**

**IN THE MATTER OF ENFORCEMENT OF THE CONSTITUTION  
AND THE BILL OF RIGHTS UNDER ARTICLES 2, 3, 10, 22, 23,  
47, 50 AND 55(B) (C) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF PART VII AND PART VIII OF  
THE COUNTY GOVERNMENTS ACT NO 17 OF 2012**

**AND**

**IN THE MATTER OF THE RULES OF NATURAL JUSTICE**

**AND**

**IN THE MATTER OF THE HIGH COURT (ORGANIZATION  
AND ADMINISTRATION ACT NO 27 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LEGITIMATE EXPECTATION**

**BETWEEN**

**SHEKUE KAHALE KOMBO ..... PETITIONER**

**AND**

**GOVERNOR LAMU COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY, LAMU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF LAMU ..... 3<sup>RD</sup> RESPONDENT**



## RULING

1. The Applicant, Shekue Kahale Kombo, has filed two applications both dated 4<sup>th</sup> April 2022. In one of the applications he prays for orders that the Respondents be compelled to issue him with a clearance certificate and a certificate of service. For ease of identification, I will refer to this application as “application A”. In the other application, he seeks for orders of review to vary the award of compensation to him from Ksh. 1,386,000/= to Ksh. 8,000,000/=. I will refer to this application as “application B”.
2. The Respondents have opposed application B through the affidavit sworn by John Mburu on 21<sup>st</sup> April 2022. However, they have not filed a response to application A.
3. In relation to application A which on the face of it is not opposed, the Applicant contends that the Respondents have declined to issue him with a certificate of service despite the employer-employee relationship between the 3<sup>rd</sup> Respondent and the Applicant having terminated. As a result, the Respondents are yet to process the Applicant’s terminal dues.
4. Although the Applicant did not make a specific plea for issuance of a Certificate of Service in the amended Petition, section 51 of the *Employment Act* makes the issuance of this certificate mandatory once the employer-employee relation between parties comes to an end. It provides thus: -

“An employer shall issue to an employee a certificate of service upon termination of his employment, unless the employment has continued for a period of less than four consecutive weeks.”
5. There would be no reason for an employer to acquiesce on this obligation unless it is his position that the employer-employee relation is still in force. In the current case, the position taken by the Respondents was that the Applicant (who had been in the 3<sup>rd</sup> Respondent’s service for more than one month) was terminated after it was discovered that he was engaged in early campaigns. This position is evidence of the fact that the employer-employee relationship between the Applicant and the 3<sup>rd</sup> Respondent has since been severed. Consequently, the 3<sup>rd</sup> Respondent through its County Public Service Board has a statutory duty under section 51 of the *Employment Act* to issue the Applicant with a Certificate of Service.
6. In respect of Application B, it is the Applicant’s contention that there is an error apparent on the face of the record that necessitates a review of the court’s decision. In support of this argument, the Applicant points to the fact that the court did not consider his submissions in its final decision. This failure, in the Applicant’s estimation, constitutes an error apparent on the face of the record.
7. As pointed out by the Applicant, his submissions were apparently misfiled at the court’s registry. Consequently, and as a matter of fact, they were not on the court record at the time the judgment was written.
8. In the Applicant’s view, had the court considered the submissions, it would have come to the conclusion that the law that applies to the Applicant’s case on assessment of the quantum of compensation is the *County Governments Act*. Consequently, the court would have, with the benefit of the views in the submissions, avoided relying on the guidelines for assessing compensation set out in section 49 of the *Employment Act*. Instead, it would have awarded the Applicant a higher amount of compensation pursuant to the provisions of the *County Governments Act*. Based on this argument,



the Applicant prays that the court reviews the award of compensation from Ksh. 1,386,000/= to Ksh. 8,000,000/=.

9. As pointed out earlier on in the ruling, this application has been opposed by the Respondents. The Respondents argue that there is no error apparent on the face of the record to warrant a review of the court's decision. In the Respondents' view, the court was not bound to consider the submissions of parties in arriving at its conclusion. What the court was bound to consider is the evidence adduced and the law that is applicable. It is the Respondents' case that in arriving at its decision, the court acted within the parameters aforesaid. According to the Respondents, the matters raised in the application ought to be grounds for appeal and not an application for review.
10. The breadth of application of the [Employment Act](#) is set out under section 3 of the Act. It applies to all employer-employee relations whether in the private or public sector. As indicated in section 3 of the Act, the only sectors to which it has no application are: the disciplined forces (both military and police); the Kenya Coast Guards; the National Youth Service; and family enterprises in which the employer's dependants are the only employees. Therefore, I must state at the very outset that the [Employment Act](#) does apply to the employment relationship that subsisted between the Applicant and the 3<sup>rd</sup> Respondent.
11. It is also perhaps necessary to point out that the [County Governments Act](#) has no peculiar provisions to guide in computation of compensation awardable to an aggrieved party in an employer-employee relation. Therefore, the law that must be resorted to in undertaking this exercise is section 49 of the [Employment Act](#).
12. Addressing this issue, the court in County Government of Garissa & another v Idriss Aden Mukhtar & 2 others [2020] eKLR stated as follows: -

“Section 3 of the [Employment Act](#) is clear that other than the categories stated therein, the [Employment Act](#) applies to all employees employed under a contract of service and provides minimum terms and conditions of employment. Therefore, although the employment of state officers is regulated by [the Constitution](#) and relevant statutes, the [Employment Act](#) applies to them and they are entitled to rights under the [Employment Act](#), unless [the Constitution](#), or the relevant statute, or their contract of service provide better terms. Given the relationship between the appellants and the respondents, and the matter having been filed in the Employment & Labour Relations Court, we find nothing wrong with the learned Judge being guided by Section 49(1) of the [Employment Act](#) in awarding damages.”
13. In the Court of Appeal case of the Governor, County Government of Mombasa v Walid Khalid and others CA No. 155 of 2018 (unreported), the court agrees with the pronouncement in the Idriss Aden case. Therefore, contrary to the position taken by the Applicant's counsel, this reflects the position on the question of the applicability of the [Employment Act](#) to public servants.
14. What I understand the court in the Walid Khalid Case as saying is that although Section 49 of the [Employment Act](#) provides an appropriate guide to assessing the quantum of compensation in cases involving public officers other than those excluded under section 3 of the Act, the trial judge in the case found that the particular circumstances of the case permitted him to look beyond the Act. This is not the same thing as saying that the [Employment Act](#) did not apply.
15. Indeed, it is now settled that in assessing compensation in employment disputes, a court may award damages beyond the ceiling set by section 49 of the [Employment Act](#) if it reaches the conclusion that there have been other violations particularly of rights which call for an award beyond the ceiling. However, this remains a matter for the discretion of the court and must be resorted to only in the



clearest of cases and with cogent justification. And to clear any doubt, a court may still make an award of damages within the capping of section 49 of the [Employment Act](#) to cover compensation for wrongful termination and other violations if it is of the view that the award satisfactorily compensates the employee for the injury suffered. In other words, it is not given that merely because there has been a pronouncement of violation of a rights that a court must award damages outside the ceiling set under section 49 of the [Employment Act](#).

16. I am therefore convinced that even if I had considered the submissions by counsel, I would still have reached the same conclusion in my decision on the quantum of damages as guided by section 49 of the [Employment Act](#). What the Applicant may be raising is a grievance as to the satisfactoriness of the award of compensation which in my view is a matter suitable for appeal and not review (see Fredrick Mwanja Musava v Alpharama Ltd [2022] eKLR). I therefore decline to allow application B.

17. Final disposition:

- a) Application A allowed to the extent that the 3<sup>rd</sup> Respondent issues the Applicant with a Certificate of Service in terms of section 51 of the [Employment Act](#).
- b) Application B declined.
- c) Each party to bear own costs.

**DATED, SIGNED AND DELIVERED ON THE 29<sup>TH</sup> DAY OF JUNE, 2022.**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

Barke for the Applicant

Juaje for the Respondents

**ORDER**

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> April 2020, this Ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M. MANANI**

**JUDGE**

