



**Kenya National Union of Medical Laboratory Officers v Kirinyaga County Public Service Board;  
Public Service Commission of Kenya & another (Interested Parties) (Miscellaneous Application  
E003 & E002 of 2021 (Consolidated)) [2022] KEELRC 13166 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13166 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**  
**MISCELLANEOUS APPLICATION E003 & E002 OF 2021 (CONSOLIDATED)**  
**DKN MARETE, J**  
**OCTOBER 31, 2022**

**BETWEEN**

**KENYA NATIONAL UNION OF MEDICAL LABORATORY  
OFFICERS ..... APPLICANT**

**AND**

**KIRINYAGA COUNTY PUBLIC SERVICE BOARD ..... RESPONDENT**

**AND**

**PUBLIC SERVICE COMMISSION OF KENYA ..... INTERESTED PARTY**  
**ATTORNEY GENERAL ..... INTERESTED PARTY**

**RULING**

1. This is an application by way of a preliminary objection dated July 6, 2021 which comes out as follows;

Take notice that at the hearing of the applicant's application dated June 29, 2021 the respondent shall raise a preliminary objection on a point of law that:-

The application dated June 29, 2021 is fatally defective. Premature and misconceived as it violates section 77(5) of the *County Governments Act, 2012* as read with section 9(2) of the *Fair Administrative Actions Act* and regulation 21 of the *Public Service Commission (County Government Public Services Appeals Procedures) Regulations 2016* in that the respondent herein having been dissatisfied with the decision made by the Public Service Commission has already filed a review against that decision and the same is pending.

2. The applicant, in the instant case the Kenya Union of Clinical Officers opposes the preliminary objection on grounds that it is wanting in merits for being offensive to section 88 (4) of the *Public Service Commission Act*.



3. It is their case that the Public Service Commission is constitutionally mandated to hear and determine disputes between the parties herein and a decision thereof is *in toto* binding.
4. Again, the preliminary objection lacks merit as this court lacks jurisdiction to interrogate the first leading to the decision of the public service commission made on April 14, 2021. Its role is only limited to enforcement or adoption of the decision as an order of court and not interfere or intervene in any way with the decision.
5. The respondent further argues and submits that section 77 (5) of the [County Government Act, 2012](#) or even section 9 (2) of [Fair Administrative Actions Act](#) do not confer stay of execution of an order of the commission.
6. In the penultimate, the respondent maintains that her application seeking enforcement or adoption of the Public Service Commission's decision is properly before court. This application is not for review or appeal as alluded by the respondent/objector, or at all.
7. The respondent/objector in support of a case filed her written submissions dated March 17, 2022 in such support. In this, they emphasize the doctrine of execution and submit that the applicant ought to exhaust her issues before the Public Service Commission before recalls to any other jurisdiction.
8. The union/respondent in her written submission also dated March 17, 2022 submits in opposition to the preliminary objection. In this, they reiterate their case that the application dated March 29, 2022 should be sustained.
9. The various written submissions on the preliminary objection and application are mixed up. These were intended to serve both purposes, the application and the preliminary objection.
10. This court shall however plough through the confusion and sought out the preliminary objection. Section 77 (5) is not an obstacle to proceedings touching on fundamental rights and freedoms of an individual.
11. The law on exhaustion of remedies must always be applied in stride. This is because it can be a source of not only injustice but also absurdity. This would arise in situations where it seeks to estop a party from pursuing its rights at an appropriate forum but instead gets dragged into any other. This would be more so in situations of a search for rights and encapsulated as fundamental rights and freedoms under the bill of rights.
12. In the current circumstances, the issue at hand are rights and article 41 of the [Constitution](#) and touches on the livelihoods of the applicant employees of the respondent. To shut them out of a deliberation and determination of their issues on the guise of the doctrine of exhaustion would not suffice. It would be unjust and unlawful.
13. I am therefore inclined to dismiss the preliminary objection with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.

**D.K.NJAGI MARETE**

**JUDGE**

**Appearances**

1. Mrs.Beacco instructed by Wanyonyi & Muhia Advocates for the Respondent/Objector.
2. Mr.Odongo instructed by AKO Advocates LLP for the Union/Respondent

