



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 50 OF 2020

SERGEANT CHARLES MWIKYA KELL.....CLAIMANT

VERSUS

THE COMMANDING OFFICER

SHIMO LA TEWA GOVERNMENT OF KENYA PRISON.....1ST RESPONDENT

THE REGIONAL PRISONS COMMANDER

MOMBASA COUNTY.....2ND RESPONDENT

THE COMMISSIONER GENERAL OF PRISONS.....3RD RESPONDENT

THE MINISTRY OF INTERIOR

AND COORDINATION OF NATIONAL GOVERNMENT.....4TH RESPONDENT

RULING

1. On 7th September 2020, the Claimant filed a Memorandum of Claim challenging his removal from the Kenya Prisons Service.
2. On 9th December 2020, the Respondents filed a Response to the Memorandum of Claim. Embedded in the Response is an objection by the Respondents to the effect that the Claimant ought to have exhausted the appeal remedies, available at the public service, before coming to court.
3. The objection was urged by way of written submissions.
4. The Court was referred to the definition of a preliminary objection in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Co. Ltd (1969) EA, 696* where it was stated that:

“a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”
5. The basis of the Respondents’ objection is that the Claimant’s suit offends the doctrine of exhaustion of remedies, and the Court therefore lacks the requisite jurisdiction to determine the issues raised therein.
6. In pursuing their objection, the Respondents rely on Section 9(2)(3) of the *Fair Administrative Action Act, 2015*, Clause K.10 of the *Human Resource Policies and Procedures Manual for the Public Service, 2016* and Rule 127(1) of the *Prison Rules*.
7. Section 9 of the *Fair Administrative Action Act, 2015* provides for judicial review generally, while Clause K.10 of the *Human Resource Policies and Procedures Manual for the Public Service, 2016* and Rule 127(1) of the *Prison Rules* provide for appeals to the Public Service Commission.
8. Having read these provisions in their entirety, I find nothing that ousts the jurisdiction of the Court to entertain the Claimant’s claim.

9. Moreover, in his claim before the Court, the Claimant raises substantive issues bordering on violation of rights, into which the Court is enjoined to inquire.

10. For these reasons I find and hold that the objection raised by the Respondents is not well taken and proceed to overrule it with costs to the Claimant.

11. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF APRIL 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Egunza for the Claimant

Miss Njau for the Respondents