



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

JUDICIAL REVIEW CASE NO. E006 OF 2021

IN THE MATTER OF AN APPLICATION BY BETHWEL KIPLAGAT

TOROMO, PRITTY ALUMASA AND MICHAEL SHOKOLI

FOR LEAVE TO FILE FOR JUDICIAL REVIEW ORDERS

BETHWEL KIPLAGAT TOROMO

PRITTY ALUMASA

MICHAEL SHIKOLI

APPLICANTS

v

COUNTY PUBLIC SERVICE BOARD

1st RESPONDENT

COUNTY GOVERNMENT OF VIHIGA

2nd RESPONDENT

RULING

1. Bethwel Kiplagat Toromo, Pritty Alumasa and Michael Shikoli (applicants) were dismissed through letters dated 12 March 2021 by the County Public Service Board, Vihiga (the Board) and on 12 April 2021, and they filed a Chamber Summons seeking leave to commence judicial review proceedings against the Board (the Board) and the County Government of Vihiga (County Government).
2. The Court directed that the Summons be served.
3. Despite service, the Board and the County Government did not respond to the application.
4. Pursuant to further Court orders, the applicants caused to be filed a supplementary affidavit and submissions.
5. The Court has considered the record.
6. Article 234(2)(ii) of the Constitution has clothed the Public Service Commission of Kenya with the function and power to hear and determine appeals in respect of county governments' public service.
7. In terms of enabling legislation, section 77(1) and (2)(c) of the County Governments Act requires persons dissatisfied with the exercise of disciplinary powers by County Public Service Boards to appeal to the Public Service Commission.
8. In the same vein, section 87(2) of the Public Service Commission Act restricts the commencement of judicial proceedings in the Courts before the exhaustion of the appeal procedure outlined in Part XV of the Act.
9. The Court of Appeal has addressed its mind severally to the exhaustion of alternatively anchored dispute resolution processes.
10. In *Geoffrey Muthinja & Ar v Samuel Muguna Henry & 1756 Ors* (2015) eKLR, the Court held:

It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the

Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews... as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts.

11. In *Secretary, County Public Service Board & Ar v Hulbhai Gedi Abdille* (2017) eKLR, the Court of Appeal said of the application of section 77 of the County Governments Act:

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..... 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.

12. The decision is binding on this Court.

13. The applicants did not exhaust the appeal procedures as contemplated by the Constitution, the County Governments Act and the Public Service Commission Act before seeking leave to commence judicial review proceedings.

14. In light of the foregoing, the Court declines to grant leave to the applicants to commence judicial review proceedings.

15. No order on costs

Delivered through Microsoft teams, dated and signed in Kisumu on this 30th day of June 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For applicants Amasakha & Co. Advocates

Respondents did not participate

Court Assistant Chrispo Aura