



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT ELDORET**

**COURT NAME: ELDORET LAW COURT**

**CASE NUMBER: ELRCMISC/E003/2021**

**CITATION: JOSEPHAT KIPKEMBOI ROTICH VS COUNTY GOVERNMENT OF UASIN GISHU AND THE COUNTY SECRETARY, PUBLIC SERVICE BOARD UASIN GISHU COUNTY AND ANOTHER**

**RULING**

**ON 2021-09-24 BEFORE HON. JUSTICE J. N. ABUODHA**

**RULING**

1. By Motion dated 12th March, 2021 the applicant moved the Court for orders among others that:
  - i. That the decision by the public service Commission dated 9th December,2020 be recognized adopted and enforced as a Judgement of the court and the Applicant be reinstated into service.
  - ii. The Respondent to be ordered to pay all salary arrears to the Applicant.
  - iii. The cost of the Applicant be awarded to the applicant.
2. The application was supported by the affidavit of the applicant who deponed in the main that:
  - i. THAT I was appointed as a County Human Resource Manager, County Government of Uasin Gishu.
  - ii. THAT vide a letter dated 9th October, 2018 I was interdicted from service. However, I was called to show cause why I should not be dismissed.
  - iii. THAT I later learnt that I was dismissed through a last pay Certificate dated 15th March, 2019.
  - iv. THAT vide a letter dated 7th June, 2019 made an appeal for the public service commission under Section 89 against the Public Service Commission Act and in there stated the particulars and submission of my case.
  - v. THAT the Public Service Commission considered the Appeal and vide a letter dated 9th December, 2020, the commission allowed the appeal against my dismissal from service and directed the Respondents to take the necessary action accordingly and thereby have me reinstated into employment.
  - vi. THAT the Respondents duly received the letter stated herein above, containing the decision.
  - vii. THAT upon notification and receipt of the commission's decision on my appeal, the Respondents have failed to heed and act accordingly and have me reinstated into service.
  - viii. HAT I have made and duly served the Respondents with notices of the reminders to Act and implement on the said decision.
  - ix. THAT vide my Advocates, I made a further demand to the Respondents to act on commission's decision and the same was duly

received.

3. The respondent opposed the application and filed a Replying Affidavit through one William Koech who deponed among others that

i. THAT I am the Secretary, County Public Service Board of the 1st Respondent and the 2nd Respondent herein hence duly competent to swear this affidavit.

ii. THAT the Applicant herein was employed by the 1st Respondent as the County Human Resource Manager.

iii. THAT the Applicant was dismissed for lawful cause on grounds of negligence of duty leading to loss of public funds amounting to Kshs. 666,460/=.

iv. THAT the Applicant was accorded a fair hearing and was eventually found culpable hence his dismissal.

v. THAT the Applicant herein was dissatisfied by that decision and appealed to the Public Service Commission.

vi. THAT vide a letter dated 9/9/20, the Public Service Commission allowed the appeal by the Applicant herein.

vii. THAT the County Public Service Board having been dissatisfied by the decision made by the Public Service Commission on the appeal made an application for review.

viii. THAT the County Public Service Board's ground for application for review was that there was an error apparent on the record of the earlier decision by the Commission.

ix. THAT the Application is premature as the applicant is fully aware of pending review proceedings before the Public Service Commission.

4. At paragraph 8 and 9 of Mr. Koech's Affidavit he stated the County Public Service Board, the respondent herein, applied for the review of the decision of the Public Service Commission and that the applicant was fully aware of the pending review proceedings before the PSC.

5. In the Court file, there is a letter dated 14th July, 2021 from PSC filed in Court on 8th September, 2021. This was after the Court had given directions on the filing of the submissions by the parties.

6. The essence of this letter is a dismissal of the review application by County Public Service Board. In the letter the PSC stated among others that the County Public Service did not present with the review application any fresh material facts which with due diligence could not have been presented during the appeal. The PSC therefore disallowed the application for review as it did not meet the provisions of Section 88 of the PSC Act 2017.

7. The sole reason why the respondent opposed the present application was the alleged pendency of the application for review by the County Public Service Board. This has now been addressed by the letter dated 14th July, 2021 and filed in Court on 8th September, 2021. There is therefore no reason left why the application dated 12th March, 2021 should not be allowed.

8. The Court therefore allows the application dated 12th March, 2021 as prayed.

9. It is so ordered.

**DATED AT ELDORET THIS 19TH DAY OF OCTOBER, 2021 DELIVERED AT ELDORET THIS 19TH DAY OF OCTOBER, 2021**

**SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)**

**THE JUDICIARY OF KENYA.**

**ELDORET ELRC**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**DATE: 2021-10-19 10:53:45**