



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU
CAUSE NO. 46 OF 2018

(Before Hon. Justice Mathews N. Nduma)

ELIZABETH OMINDE.....1ST CLAIMANT
ALFRED KIPKEMOI.....2ND CLAIMANT
JOHN MAKHOKHA.....3RD CLAIMANT
HENRY SHIMWECHE.....4TH CLAIMANT
EDWARD OWITI OBADO.....5TH CLAIMANT
WYCLIFF BARAZA ODHIAMBO.....6TH CLAIMANT

VERSUS

KAKAMEGA COUNTY GOVERNMENT.....1ST RESPONDENT
KAKAMEGA COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. The claimants had their employment terminated by the County Public Service Board by letters dated 19th October 2017 following disciplinary hearings conducted by the Board.
2. In the letter of termination, the claimants were notified that they had ninety (90) days within which to appeal to the Public Service Commission in terms of *Section 77 of the Public Service Act, 2012*.
3. The claimants did not Appeal to the Public Service Board as requested to do within the prescribed period but instead filed this suit on 21st February 2018 without exhausting the prescribed internal procedure.
4. This court in Employment and Labour Relations Court at Kisumu ***Shem Okora Onywera vs Kisii Government and another (2018) eKLR*** upheld a preliminary objection raised against the filing of the suit without appealing to the Public Service Commission in terms of *Section 77 of the public service Act 2012* and struck out the suit for premature filing.
5. This court was referred to the Court of Appeal decision in ***County Public Service Board and another vs Wajir County Government and another in which the Court of Appeal per Makhanda Ouko and Minoti J.J.A. held (2017) eKLR.***

“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.....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. In terms of Republic vs National Environment Management Authority (Supra), we discern no exceptional circumstances in this appeal that would have managed the bypassing of the statutory appellate process by the respondent. Her contention that she disregard the appeal because it could not afford her an opportunity to question the procedure followed by the appellate is in our view, without basis because Section 77 has placed no fetter to the jurisdiction of the Public Service Commission. There is no requirement for instance that reasons for

the decision be availed to an aggrieved party before he can prosecute an appeal before it”

6. In the present case, the claimants have argued that *Section 77 of the County Government Act* is not a mandatory provision; it is capped with the word “*may*” which gives the probability to the claimant to appeal to the Public Service Commission and not an obligation. The claimants further argued that this court has exclusive original and mandatory jurisdiction to hear and determine all disputes relating to Employment and Labour Relations.

7. This court is bound by the decision of the Court of Appeal above cited and finds that the claimants were bound to Appeal to the PSC before approaching this court. The claimants have not proffered any good reason that warranted them to avoid the statutory appellate procedure under Section 77 of the County government Act, 2012.

8. The reasons in the Court of Appeal decision in **Nairobi Civil Appeal No. 92 of 1992, Speaker of the National Assembly vs James Njenga Karume (1992) eKLR**, which was embraced by the Court of Appeal in the PSC case (Supra) still holds true that:

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the constitution or an Act of parliament, that procedure should be strictly followed”

9. Accordingly the suit is struck out with no order as to costs.

Ruling Dated, Signed and delivered this 27th day of February, 2020

Mathews N. Nduma

Judge

Appearances

M/S Shivoli for Respondents/Objector

Mr. Otieno Yogo for claimants/Respondents

Chrispo – Court Clerk