



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 204 OF 2019

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF TANA RIVER.....1ST RESPONDENT

TANA RIVER COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

Rika J

Court Assistant: Andrew Mwabanga

Brian Otieno & Company Advocates for the Claimant

John Bwire & Associates Advocates for the Respondents.

RULING

1. On 29th May, 2020, the Court struck out the Claim herein, upon Preliminary Objection raised by the Respondents.
2. The Court agreed with the Respondents, that the Claimant ought to have taken the dispute before the Public Service Commission, under Section 77 of the County Governments Act.
3. It was also the view of the Court, that the present Claim was premature and sub-judice, if not res-judicata, Parties having been involved in another related dispute in this Court's Cause No. 299 of 2018.
4. The Claimant seeks review of the orders made on 29th May, 2020. The Application is based on the Supporting and Further Affidavits, sworn by General Secretary, Hon. Roba S. Duba.
5. Parties filed comprehensive Submissions and Judicial Authorities for and against review.

The Court Finds: -

6. The Claimant has shown there is sufficient reason and/or error apparent on the face of the record, as required under Rule 33 of the E&LRC (Procedure) Rules, 2016, to warrant review.
7. First, the Court may have made an error, with respect to the identity of the Grievants represented by the Claimant in the 2 Claims. The number of the Grievants in the initial Claim, differs from the number stated in the second Claim.

8. Second, the Court in rejecting an Application for temporary injunction filed by the Claimant in Cause No. 299 of 2018 stated:

“In short, this Ruling does not preclude the Claimant from instigating a Claim for unfair termination in the future. It all depends on the course the dispute takes from here.”

9. It was erroneous for this Court, to strike out the Claim, after the Court had assured the Claimant that, rejection of the Application for injunction in the initial Claim, did not preclude the Claimant from presenting a fresh Claim.

10. There is weight in Claimant’s argument that the present Claim arose upon the Respondent terminating the contracts of specific Employees. At the time the initial Claim was filed, the process of termination was incomplete.

11. On jurisdiction, both Parties are aware of Section 77 of the County Governments Act, and Sections 85 and 86 of the Public Service Commission Act. They do not however, agree on the interpretation to these provisions of the law.

12. The correct interpretation is as submitted by the Respondent. The Public Service Commission is primarily the right dispute settlement forum, in disputes between County Governments and their Employees. 2 Acts of Parliament affirm the primacy of the Public Service Commission Mechanism. Courts have frequently affirmed, that where legislation has provided Parties with a dispute settlement mechanism outside the Courts, that mechanism must be exhausted before resort to the Courts.

13. The Claimant has not explained its repeated failure to submit to the dispute settlement mechanism, availed to the Parties by the 2 Acts of Parliament.

IT IS ORDERED: -

a. The orders made on 29th May, 2020, striking out the Claim herein, are reviewed and set aside.

b. They are substituted with an order referring the Claim herein to the Public Service Commission, and staying proceedings, pending the outcome of the PSC Mechanism.

c. No order on the costs.

Dated and delivered at Mombasa this 28th day of **October, 2020.**

James Rika

Judge