



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 349 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 26th February, 2019)

JESSICA WANJA KINYUA.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF MACHAKOS.....RESPONDENT

RULING

1. Before this Honourable Court for determination, is the Respondent's Notice of Preliminary Objection dated 23rd March 2016. The Preliminary Objection is based on the following grounds that:-

a. The Honourable Court should not entertain this suit as the Respondent is not the proper party to the proceedings by virtue of Section 57 of the County Government Act, 2012.

b. Section 77 of the County Governments Act, 2012 stipulates the right forum for the Claimant to air her grievances which proviso has been violated.

c. The suit is incompetent, bad in law, improperly filed and an abuse of the Honourable Court's process.

2. On 20th September 2016, parties agreed to dispose of the Preliminary Objection by way of written submissions. However, the Claimant has never filed a response or submissions regarding the Preliminary Objection. Consequently, on 22nd January 2019 the Court set a ruling date for 26th February 2019 and directed that the Claimant be served.

The Respondent's Submissions

3. In its submissions dated 4th October 2016 and filed on 5th October 2016, the Respondent submitted on the following issues: whether the Respondent is the right party to this suit and whether the present Memorandum of Claim was properly instituted given that a statutory procedure for redressing the complaints exists.

4. The Respondent submits that Section 57 and Part VII of the County Governments Act 2012 outlines the right party to these proceedings as the County Public Service Board in each County since it is the one involved in the hiring and firing of staff.

5. The Respondent further submits that the Claimant has not followed the right procedure as stipulated in Section 77 of the Act which provides that any person dissatisfied by the decision of the County Public Service Board, should appeal to the Public Service Commission which can entertain an appeal on any decision relating to the employment of a person in a County Government.

6. The Respondent relies on the case of **Luka Angaiya Lubwayo vs. Another vs. Gerald Otieno Kajwang & Another [2013] eKLR** where the Court relied on the cases of **International Centre for Policy and Conflict & 4 Others vs. the Hon. Uhuru Kenyatta & Others Petition No. 552 of 2012** and **Speaker of National Assembly vs. Njenga Karume [2008] 1 KLR 425** to hold that the unlimited jurisdiction of the High Court cannot be invoked where Parliament has specifically and expressly prescribed procedures for handling grievances raised by Petitioners.

7. I have examined the averments and submissions of the Respondent/Applicant herein. The Claimant has indeed sued the County Government of Machakos, the Respondent herein who deny it ever employed the Claimant. It is also true that under the County Government Act 2012, Part VII establishes the County Public Service Board which has the capacity to sue and be sued and its functions include hiring and firing of staff in the County.

8. The Respondent is therefore not the proper party to be sued herein. I agree with the Respondent's contention that they are improperly sued herein and therefore the Preliminary Objection has merit. I therefore strike the Respondent herein from these proceedings.

Dated and delivered in open Court this **26th day of February, 2019.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Malelu for Respondent – Present

No appearance for Claimant