



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**ELRC CAUSE NO. 282 OF 2018**

***(Before Hon. Justice Mathews N. Nduma)***

**LUCY ATIENO MATENGO.....CLAIMANT**

**VERSUS**

**COUNTY PUBLIC SERVICE BOARD- KISUMU.....1<sup>ST</sup> RESPONDENT**

**H.E. PROF PETER ANYANG NYONGO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Notice of Motion dated and filed on 14<sup>th</sup> September 2018 seeks to have the claim struck out for want of jurisdiction by dint of Section 77 of the County governments Act. Furthermore, the application seeks to have the names of the 2<sup>nd</sup> respondent His Excellency Professor Anyang' Nyong'o struck out from the suit.

2. The basis of the application is that there exists no employer and employee relationship between the claimant who was employed by the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent and secondly the employment of the claimant was terminated on 26<sup>th</sup> September 2017 by the 1<sup>st</sup> respondent and therefore, the claimant has not exhausted the Appeal procedure under Section 77 of the County Government sAct, and thus the suit was filed prematurely and it be struck off.

3. The application is opposed vide replying Affidavit of the claimant the former County Chief Office, Gender, Culture and Sports pursuant to the provisions of Section 45 of the County government Act, 2012. That the termination of employment emanated from letter by the 2<sup>nd</sup> respondent dated 24<sup>th</sup> August 2017 in which the 2<sup>nd</sup> respondent sent the claimant on compulsory leave hence the 2<sup>nd</sup> respondent has been properly enjoined in the suit.

4. Furthermore, Section 77 of the County government's Act deals with Appeals against decisions of the County Public Service Board and not by the County Executives as the case herein.

5. The claimant prays that the application be dismissed with costs.

**Determination**

6. The claimant was sent on compulsory leave by the 2<sup>nd</sup> respondent in his capacity as the Governor Kisumu County and not in his personal capacity. The employment of the claimant was terminated by the County Government of Kisumu vide a letter by Dr. C. Olango Onudi, AG, County Secretary.

7. The Kisumu County Public Service Board was not involved in this matter at all.

8. Section 77 of the County government's Act deals with appeals against decisions of County Public Service Board and not the decisions of the Governor or the County Secretary. *See Decision by Justice Maureen Onyango in Samuel Okuro and 7 others vs Kisumu County Public Service Board and another (2017) eKLR. The Court of Appeal in sitting at Kisumu on the said decision held:*

***“Under Section 77 of the County governments Act that allows any county public officer that is dissatisfied with the decision of the County Board in a disciplinary process to appeal to the public service commission”.***

9. It follows that the application to strike out the suit on the basis that it is premature by dint of Section 77 of County governments Act is misconceived and without merit. That point is dismissed. However, the 2<sup>nd</sup> respondent did not act in this matter in his personal capacity and the

application to strike out his name from the suit has merit. Accordingly the name of His Excellency Professor Peter Anyang' Nyong'o is struck out of the statement of claim.

10. In the final analysis, the name of the 2<sup>nd</sup> respondent is struck out of the statement of claim and other pleadings in this matter.

11. The application to strike out the suit as premature is dismissed. Costs in the cause.

**Ruling Dated, Signed and delivered this 2<sup>nd</sup> day of May, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. KIprono for the claimant

Mr. Achuna for the Respondent

Chrispo – Court Clerk