



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CAUSE NO. 82 OF 2019**

**IN THE MATTER OF SECTION 77 OF THE COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF SECTION 89 OF THE PUBLIC SERVICE COMMISSION ACT**

**AND**

**IN THE MATTER OF COUNTY APPEALS NO.59, 60, 61 AND 62 ALL OF 2018 AGAINST COMPULSORY LEAVE AND  
SUSPENSION BY MANDERA COUNTY GOVERNMENT OF HUSSEIN DAYOW ABDULLAHI, AFTIN AHMED ALLI,  
ALIKHER HASSAN OSMAN & ABDIAZIZ MOHAMED OMAR**

**AND**

**IN THE MATTER OF THE ENFORCEMENT OF THE DECISIONS MADE BY THE PUBLIC SERVICE COMMISSION ON  
THE APPEALS DATED 05.12.2018**

**BETWEEN**

**HUSSEIN DAYOW ABDULLAHI.....1<sup>ST</sup> APPLICANT**

**AFTIN AHMED ALLI.....2<sup>ND</sup> APPLICANT**

**ALIKHER HASSAN OSMAN.....3<sup>RD</sup> APPLICANT**

**ABDIAZIZ MOHAMED OMAR.....4<sup>TH</sup> APPLICANT**

**- VERSUS -**

**COUNTY GOVERNMENT OF MANDERA.....1<sup>ST</sup> RESPONDENT**

**MANDERA COUNTY PUBLIC SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 26<sup>th</sup> July, 2019)

**RULING**

The applicants filed an application on 20.07.2019 through Kamotho Njomo & Company Advocates. The application was under section 89 of the Public Service Commission Act, Section 51(3) of the Employment Act, 2007 Section 3(1) and 12 of the Employment and Labour Relations Court Act and Rule 17(2) of the Employment and Labour Relations Court (Procedure) Rules 2016; and Article 159 (1) of the Constitution of Kenya, 2010 and all other enabling provisions of the law.

The applicants prayed for orders that:

- a) The motion herein be certified urgent and an inter-partes hearing date be allocated on priority basis on account of urgency.
- b) The decisions by the Public Service Commission made on 05.12.2018 reinstating into service the 1<sup>st</sup> to 5<sup>th</sup> applicants and payment

of their withheld salaries and allowances be recognised, adopted and enforced as a judgment of the Court and a decree to issue forthwith.

c) The costs of the application be awarded to the applicants.

The application was based on the supporting affidavit of Kamotho Njomo & Company Advocates and upon the following grounds:

a) The applicants filed against the respondents cause No. 740 of 2018 at Nairobi and subsequently parties recorded a consent that the matter to proceed before the Public Service Commission as an appeal under section 77 of the County Governments Act.

b) The Commission considered the appeals and on 05.12.2018 decided the disputes in favour of the applicants and against the respondents in the following terms:

i. The appeals filed by the applicants herein be allowed as the disciplinary process was unlawful, irregular and unfair.

ii. The applicants be reinstated into service and paid all their withheld salaries and allowances.

c) On 11.12.2018 the decision by the Commission was filed in cause No. 740 of 2018 at Nairobi and on 13.12.2018 the Court ordered that the suit was thereby determined in view of the decision by the Commission.

d) On 17.12.2018 the applicants reported back to work but were turned away to await the respondents' decision. Despite reminders the respondents have failed to implement the Commission's decision.

e) It is necessary to adopt the decisions of the Commission under section 89 of the Public Service Commission Act so as to enforce them and to defeat the respondents' refusal to implement the decisions. No appeal or review has been preferred against the Commission's decisions herein.

f) The Court has jurisdiction to enforce decisions made by the Commission.

The respondents have opposed the application by filing on 09.07.2019 the replying affidavit of Anzal Rashid, the County Legal Officer for 1<sup>st</sup> respondent and through Issa & Company Advocates. The respondents' case is that they have challenged the Commission's decisions by filing Judicial Review Application No.118 of 2019 in this Court at Nairobi on account that the proceedings before the Commission violated the respondents' right to a fair hearing as per Article 50(1) of the Constitution and challenging the constitutionality of sections 87(2), 88(1), 88(4), 89(1), 89(2) of the Public Service Commission Act and regulation 13(4) of the Commission's County Public Service Appeals Regulations.

Section 89 of the Public Service Commission Act, 2017 provides that any person affected by the decision of the Commission made on appeal may file the decision for enforcement by the Employment and Labour Relations Court provided for in Article 162(2) (a) of the Constitution. It is clear that the applicants have complied with that provision and they are entitled to the enforcement of the decisions. The Court has considered the material on record including the parties' respective submissions. The respondents do not say that the decision by the Commission was arrived at in contravention of the procedure prescribed in the Public Service Commission Act and applicable regulations. All the respondents are saying is that they challenge the constitutionality of the statutory provisions and regulations and as pleaded in the judicial review application that is pending hearing and determination. The Court finds that the decisions by the Commission herein were made in accordance with the applicable statutory provisions and regulations and as long as the said provisions have not been repealed or revoked or declared unconstitutional by a Court of competent jurisdiction, then the applicants are entitled to the remedies as prayed for.

The evidence is that the respondents have failed to voluntarily obey and implement the Commission's decisions and in such circumstance, the respondents will pay the applicants' costs of the application herein.

In conclusion the application filed for the applicants on 20.06.2019 is hereby allowed with orders:

a) The decisions by the Public Service Commission made on 05.12.2018 reinstating into service the 1<sup>st</sup> to 4<sup>th</sup> applicants and payment of their withheld salaries and allowances be and is hereby recognised, adopted and to be enforced as a judgment of the Court and a decree to issue forthwith in terms of the Commission's decisions exhibited on the supporting affidavit respectively.

b) The respondents to pay the applicants' costs of the application.

**Signed, dated and delivered in court at Nairobi this Friday 26<sup>th</sup> July, 2019.**

**BYRAM ONGAYA**

**JUDGE**