



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT KISUMU**

**PETITION NO. 43 OF 2017**

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

**ISMAEL NOO ONYANGO .....1<sup>ST</sup> PETITIONER**

**JOANNES WANGACHI OKERE.....2<sup>ND</sup> PETITIONER**

**=VERSUS=**

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

**JOE A. DONDE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Respondents have raised Preliminary Objection to the Petition to wit:-

(i) **THAT** this Honourable Court does not have the jurisdiction to hear the Application dated 15<sup>th</sup> November, 2017 and indeed the Petition dated the 15<sup>th</sup> November, 2017 as the Petitioners herein have not exhausted all legal remedies known in law before moving this Honourable Court by way of the aforementioned Application and Petition.

(ii) **THAT** the County Governments Act No. 17 of 2012 at Section 77 states that appeals by any person aggrieved by the action of the County Public Service Board lies to the Public Service Commission.

(iii) **THAT** the Public Service Commission Act at Section 74 states that the right of appeal for a public officer aggrieved by the decision of a person in authority as being before the Public Service Commission and the procedure for instituting an appeal lies therein.

(iv) **THAT** the County Government Act outlines the procedure for appeals to the Public Service Commission Act and the Notice of Motion and Petition dated and filed on 15<sup>th</sup> day of November, 2017 is incompetent and void, being an abuse of the due process of this Honourable court having been prematurely filed contrary to the aforementioned sections of the County Governments Act as well as the Public Service Commission Act.

2. This court is persuaded by the decision of Mumbi Ngugi in **HCCC No. 283 of 2014, Gideon Meyoki & Others v County Government of Kajiado & 2 others** in which the learned judge, relied on the Court of Appeal decision in **Speaker of the National Assembly vs The Hon. James Njenga Karume, Civil Application No. 192 of 1992 (UR)** and **HCC No.17 of 2014, James Akelerio Alias Muguu and Another vs Moses Kasaine Lenoikilal and 3 others** to reach the finding that –

*“Where there is clear procedure for the redress of any particular grievance prescribed by the constitution or an Act of parliament that procedure should be strictly followed ...”*

3. Section 77 of the County Governments Act, provides:-

*“(1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any County Public Officer may appeal to the Public Service Commission (in this part referred to as the ‘commission’) against the decision.*

*(2) The commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of –*

*(c) disciplinary control ...*

*(e) retirement and any other removal from service.”*

4. The Petitioners herein seeks to have their suspension by the Siaya County Public Service Board declared null and void and that the decision be quashed and have the petitioners reinstated to their jobs.

5. It is apparent from the petition itself that the Petitioners were suspended by letters dated 9<sup>th</sup> November, 2017 and filed this petition on 15<sup>th</sup> November, 2017 a few days later without following the laid down procedure under section 77 of the County Governments Act, No. 17 of 2012.

6. Although the jurisdiction of the Employment and Labour Relations Court is unlimited on matters employment and labour, where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of parliament, it should be strictly followed. Further cases, which support this position are **Mayers and Another vs Akira Ranch Limited [1972] EA 347**, **Narok County Council v Transmara County Council [2000] IEA 161** and **Stephen Wanyee Roki vs Kenya Airports Authority HCCC No. 162 of 2001**.

7. Section 77(2) employs, mandatory terms on the mandate of the public service commission as follows –

*“The Commission shall entertain appeals on any decision relating to employment of a person in a County Government ...”*

There is no option given to a party to choose whether or not to file grievances with the commission.

8. For these reasons the petition has been filed before this court prematurely and the court upholds the preliminary objections raised and dismisses the petition with costs.

**Ruling Dated, Signed and delivered this 12th day of April, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances:-**

Mr. Yogo for Petitioners/Applicants

Otieno Ogola for Respondents

Chrispo – Court Clerk