



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
PET NO 81 OF 2017

DR. NAOMI MAWIA MANG'ATU.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KITUI & 2 OTHERS.....RESPONDENT

RULING

1. By a notice of preliminary objection dated 3rd November, 2017 counsel for the 1st, 2nd and 3rd respondents objected that the court did not have and had not acquired jurisdiction over the case since the petitioner ought to have first appealed to the Public Service Commission against the 2nd Respondents decision to interdict her and that the cause of action of removing the petitioner from office had not arisen hence the court could not litigate on a cause which was yet to arise.

2. Counsel for the petitioner in opposition to the preliminary objection submitted that the petitioner was challenging the validity of the purported interdiction of the petitioner. The assertion that the petition was premature was therefore false and meant to mislead the court.

3. According to counsel, the appeal to Public Service Commission contemplated under Section 77 of the County Government Act is in respect of legal interdiction carried out by an authorized entity or person. The commission according to counsel lacked the authority to determine whether the interdiction was legal or otherwise and whether the party who carried it out was authorized in law or not. These are legal questions which could only be determined by a court of law vested with authority to interpret the statutes and the constitution.

4. Under section 9(2) Fair Administrative Actions Act the court is prohibited from considering an application for review of an administrative action or decision unless the mechanism including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted. Whereas submissions by counsel for the petitioner are plausible to the extent that only a court of law is bested with power to interpret statutes and the constitution, the petitioner herein admits that she has been charged with a corruption offence being Kitui Criminal Case No. 1000 of 2017.

5. Section 62 of the Anti-Corruption and Economic Crimes Act provides for suspension of a public officer who is charged with a corruption or economic crime with effect from the date of the charge until the conclusion of the case. The interdiction letter dated 28th September, 2017 reads in part;

“Reference is made to the Ethics and Anti-Corruption Commission’s letter of 15th September, 2017. The letter under reference informed this office that EACC carried out an investigation into allegations of abuse of office and conflict of interest against you. Consequently you were arrested and charged in Kitui Court on 12th September, 2017. To facilitate investigations of the alleged misconduct, it has been decided that you be and are hereby interdicted from exercising your duties as a member of the Kitui County Public Service Board pending finalization of your court case”.

6. This suspension was carried out on the advice of the EACC and pursuant to Section 62 of ACECA. To this extent the court lacks jurisdiction to interfere with procedural requirements of a statute unless it can be demonstrated that fundamental flaws occurred in invoking or execution of the statutory procedural requirement.

7. The court would therefore decline jurisdiction to the extent that the petitioner’s suspension was a statutory procedural requirement over which the court cannot exercise jurisdiction through injunction or conservatory order. The petition is therefore found incompetent and is hereby struck out with costs.

8. It is so ordered.

Dated at Nairobi this 28th day of September, 2018

Abuodha Jorum Nelson

Judge

Delivered this 28th day of September, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.