



Waruru & another v County Government of Laikipia & another (Miscellaneous Application E295 & E296 of 2023 (Consolidated)) [2024] KEELRC 752 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 752 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E295 & E296 OF 2023 (CONSOLIDATED)**

L NDOLO, J

APRIL 11, 2024

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT, 2017

AND

**IN THE MATTER OF THE PUBLIC SERVICE COMMISSION
(COUNTY APPEALS PROCEDURES) REGULATIONS, 2022**

BETWEEN

ANTHONY MUCHUGU WARURU 1ST APPLICANT

JOHN MURUTHI NDUNG’U 2ND APPLICANT

AND

COUNTY GOVERNMENT OF LAIKIPIA 1ST RESPONDENT

LAIKIPIA COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. By an Originating Notice of Motion dated 13th December 2023, the Applicants seek an interim order barring the Respondents from taking any decision adverse to their employment, including decision regarding stoppage of their salary or terminating their contracts.
2. The application is supported by the Applicants’ affidavits and is premised on the grounds that:
 - a. The Applicants are public officers in the employment of the 1st Respondent, the County Government of Laikipia;
 - b. The Applicants have received communication from the 1st Respondent seeking to convert their terms of service from permanent and pensionable terms to fixed term contracts and to subsequently bring to an end the employment relationship, which communication remains unclarified or un-vacated despite pleas by the Applicants;



- c. The Applicants' terms of service are of permanent and pensionable tenure, and the decision to unilaterally commute the terms of employment to fixed term contracts was made in utter violation of the law;
 - d. In line with the statutory requirements, the Applicants embarked on a process of challenging the decision internally but their appeals have neither been acknowledged nor attended to, forcing them to lodge appeals with the Public Service Commission;
 - e. The Applicants' appeals are presently before the Public Service Commission, and there is no likelihood that they will be determined before the Respondents take further adverse steps as regards the subject employment contracts;
 - f. The Applicants are reasonably apprehensive that the Respondents will bring to an end the employment relationship during the pendency of the said appeals, and seek protection of their employment by the Court, while they continue to pursue the appeals at the Public Service Commission;
 - g. The Public Service Commission does not have jurisdiction to grant interim orders, pending the determination of the appeals, leaving the Applicants with no option but to seek redress from the Court;
 - h. The Respondents have already signalled the intention to take adverse steps by recently communicating to the Applicants to proceed and hand over their offices, a move designed to completely deny the Applicants the ability to continue discharging their employment duties;
 - i. The Respondent have proceeded to advertise for various positions, including the Applicants' roles, a clear indicator that they are keen to remove the Applicants from employment;
 - j. The Respondents are likely to stop remitting the Applicants' salaries after December 2023 with the risk of exposing the Applicants to a life of indignity;
 - k. The Respondents' actions are unlawful and unfair;
 - l. The Applicants are facing imminent risk of permanently losing their livelihood unlawfully and unfairly, unless the Court issues orders forestalling the threatened actions by the Respondents;
 - m. There is no specific procedure provided under the law for invoking the jurisdiction of the Court to provide conservatory relief under the circumstances disclosed above;
 - n. The Respondents will not suffer any prejudice if the application is allowed;
 - o. It is just and fair that the application be allowed.
3. The Respondents oppose the application by a replying affidavit sworn by the County Secretary, Koinange Wahome on 8th February 2024.
 4. Wahome states that the Applicants were issued with three year fixed term contracts running from 12th October 2020 to 11th October 2023. He asserts that the Applicants are no longer employees of the 1st Respondent.
 5. Wahome claims to have notified the Applicants that their contracts were about to lapse, in good time, and the Applicants did not raise any objection. He adds that payslips issued to the Applicants consistently reflected that they would leave service effective 12th October 2023.



6. The first issue for determination in the consolidated applications is whether the Court has jurisdiction to deal with a matter that is pending before the Public Service Commission.
7. In their written submissions, the Respondents cite Sections 85 and 87(2) of the [Public Service Commission Act](#) which provide as follows:
 85. The Commission shall, in order to discharge its mandate under Article 234(2)(i) of [the Constitution](#), hear and determine appeals in respect of any decision relating to engagement of any person in a County Government including in respect of-
 - a. recruitment, selection, appointment and qualifications attached to any office;
 - b. Remuneration and terms and conditions of service;
 - c. disciplinary control;
 - d. national values and principles of governance, under Article 10 and values and principles of public service under Article 232 of [the Constitution](#);
 - e. retirement and other forms of removal from the public service;
 - f. pension benefits, gratuity and any other terminal benefits; or
 - g. any other decision the Commission considers to fall within its constitutional competence to hear and determine an appeal in that regard.

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- (2) A person shall not file any legal proceedings in any court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided under this Part has been exhausted.
8. The Respondents further rely on the Court of Appeal decision in *Secretary, Wajir County Public Service Board & another v Hulbhai Gedi Abdille* [2017] eKLR where it was determined that:

“Where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime...”
9. This is all very well. However, the issue before me is whether the Court can, in a proper case, grant interim relief to preserve the subject matter of an appeal pending before the Public Service Commission.
10. The answer to this question was provided by my brother Manani J in [Kamba & 8 others v County Public Service Board, Machakos County Government & 2 others](#) [2023] KEELRC 2227 (KLR) in the following terms:

“In my estimation, a grievant that is in urgent need of interim relief of injunction in the first instance will be deprived of a suitable remedy if his options for dispute resolution are restricted to the PSC. This, in my view, provides sufficient justification for such grievant to bypass the grievance resolution procedure that is prescribed under section 77 of the [County Government Act](#) but only for purposes of pursuing the interim relief that is sought.”



11. I do not need to say more on this issue, save to add that to send a party away from the seat of justice knowing very well that the alternative dispute resolution mechanism is incapable of preserving the subject matter of the dispute would be a travesty of justice.
12. The jurisdictional issue settled, I will now proceed to consider the application on merit. The orders sought by the Applicant falls within the province of interlocutory injunctions and the operating conditions are well known, having been established in *Giella v Cassman Brown Co. Ltd* [1973] EA 358 as follows:
 - a. That the applicant has established a prima facie case with a probability of success;
 - b. That if the order sought is not granted, the applicant stands to suffer irreparable harm, which cannot be compensated by an award of damages; and
 - c. If the court is in doubt, it will determine the application on the balance of convenience.
13. As to what constitutes a prima facie case, the Court of Appeal in its decision in *Mrao v First American Bank Kenya Limited & 2 others* [2003] KLR, 123 stated as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
14. The Applicants’ complaint stems from an alleged conversion of their tenure of employment from permanent and pensionable terms to fixed term contracts. It is however evident that the Applicants’ employment contracts came to an end on 11th October 2023, meaning that by the time they moved the Court on 13th December 2023, there was no subsisting employment relationship upon which the Court could grant orders.
15. For this reason, I find and hold that the Applicants have failed to establish a prima facie case as defined in law. With this finding, I do not need to consider the other conditions established in *Giella v Cassman Brown* (supra).
16. In the result, the twin applications dated 13th December 2023 are declined with an order that each party will bear their own costs.
17. The interim orders granted on 20th December 2023 are vacated.
18. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF APRIL 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Amol for the Applicants

Mr. Wahome for the 1st Respondent

No appearance for the 2nd Respondent

