

KENYA / JUDGMENT

# Rawich & 39 others v Public Service Commission & 6 others

## [2026] KEELRC 1082 (KLR)

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## COURT

Employment and Labour Relations Court

## CASE / FILE NUMBER

Petition E019 of 2025

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Rawich & 39 others v Public Service Commission & 6 others (Petition E019 of 2025) [2026] KEELRC 1082 (KLR) (27 April 2026) (Ruling) Neutral citation:

[2026] KEELRC 1082 (KLR) Republic of Kenya In the Employment and Labour Relations Court at Kisumu Petition E019 of 2025 Nzioki wa Makau, J April 27, 2026 IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 19, 20, 22, 27, 28, 29, 40, 43, 47, 50, 159, 160, 234(2)(i), 236 & 259 OF THE CONSTITUTION AND IN THE MATTER OF: SECTIONS 5, 8, 9, 10, 19, 35 AND 74 OF THE EMPLOYMENT ACT, SECTIONS 77 OF THE COUNTY GOVERNMENTS ACT NO. 17 OF 2012, SECTION 85 AND 86 OF THE PUBLIC SERVICE COMMISSION ACT, 2011 AND IN THE MATTER OF: PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022 AND COUNTY PUBLIC SERVICE HUMAN RESOURCE MANUAL, 2013 AND IN THE MATTER OF: THE DECISION OF THE PUBLIC SERVICE COMMISSION IN COUNTY APPEAL NO. 009 OF 2025 FELIX OWOUCHA & 39 OTHERS -VERSUS- THE COUNTY GOVERNMENT OF KISUMU & 5 OTHERS ISSUED ON 7TH OCTOBER 2025  
Between Felix Owuocha Rawich & 39 others Petitioner and Public Service Commission 1st Respondent The County Government Of Kisumu 2nd Respondent County Secretary Kisumu County 3rd Respondent County Executive Committee Member Public Service, County Administration And Participatory Development 4th Respondent Chief Officer Public Service County Administration And Participatory Development 5th Respondent Kisumu County Public Service Board 6th Respondent County Executive Committee Member In Charge Of Finance 7th Respondent

### Ruling

1. The 1st Respondent has raised a Preliminary Objection dated 9th February 2026 to the Petition on the following grounds: 1. That this Court lacks jurisdiction to entertain the Petition by virtue of the doctrine of exhaustion. 2. That the Petition is premature, misconceived and an abuse of the court process, the Petitioners having failed to exhaust the appellate mechanism provided under

Article 234(2)(i) of the Constitution, section 77 of the County Governments Act, sections 85 and 86 of the Public Service Commission Act and the Public Service Commission (County Appeals Procedures) Regulations 2022.3.That the Petitioners were expressly advised by the Commission to file an appeal against the decision of the Kisumu County Public Service Board if dissatisfied but deliberately declined to do so.4.That no final determination on merits was made by the Commission capable of grounding a constitutional cause of action.5.That the issues raised in the Petition fall within the Commission's appellate jurisdiction, which has not been invoked by way of a proper appeal against the decision of the County Public Service Board.6.That the Petition offends section 9(2) and (3) of the Fair Administrative Actions Act, which bars judicial review or constitutional intervention where alternative statutory remedies have not been exhausted.7.That the Petition as against it discloses no reasonable cause of action. 2.The Preliminary Objection was canvassed by way of written submissions. 1st Respondent's Submissions 3.The 1st Respondent submits that this Court lacks jurisdiction to entertain the Petition on account of the Petitioners' failure to comply with the doctrine of exhaustion. It asserts that the Petition offends Article 234(2)(i) of the Constitution, section 77 of the County Governments Act, sections 85 and 86 of the Public Service Commission Act, the Public Service Commission (County Appeals Procedures) Regulations, 2022 and section 9(2) and (3) of the Fair Administrative Actions Act. The 1st Respondent submits that these provisions designate the Public Service Commission as the primary forum for redress by persons aggrieved by decisions of a County Public Service Board, an avenue the Petitioners failed to pursue despite being expressly advised to do so. In support of this position, reliance is placed on Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, which underscored that where a court lacks jurisdiction, it must down its tools and that jurisdiction cannot be conferred by craft, acquiescence or consent of parties but flows from the Constitution or statute. The 1st Respondent further submits that the doctrine of exhaustion is a jurisdictional imperative rather than a mere procedural technicality. It cites Speaker of the National Assembly v Njenga Karume [1992] KLR 21 and Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] eKLR, for the proposition that where the Constitution or statute provides a clear procedure for redress, that procedure must be strictly followed. On that basis, the 1st Respondent urges the Court to uphold the Preliminary Objection and dismiss the Petition with costs, contending that no exceptional circumstances have been demonstrated to warrant exemption from the doctrine of exhaustion. Petitioner's Submissions 4.The Petitioners oppose the Preliminary Objection, contending that it does not raise a pure point of law capable of disposing of the suit in limine. They assert that issues such as whether the 1st Respondent's CEO/Secretary is authorized or qualified to hear appeals from County Government officers, and whether the letter dated 2nd October 2025 constitutes a decision of the Public Service Commission, require evidentiary interrogation. They further submit that, in any event, they have exhausted the available appellate mechanisms. In particular, they contend that the letter dated 2nd September 2025, indicating that County Appeal No. 009 of 2025 had been concluded, constitutes exhaustion of the appeal process. Additionally, they submit that their treatment including the unjustifiable delay in hearing County Appeal No. 009 of 2025 and holding their employment status in limbo among others justify exemption from the exhaustion doctrine. In support of this position, they rely on the case of Fleur Investments Limited v Commissioner of

Domestic Taxes & another [2018] eKLR, which in citing *Speaker of the National Assembly v Njenga Karume* [1990-1994] EA 546 stated: "Whereas Courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly." 5. In conclusion, the Petitioners urge the court to dismiss the Preliminary Objection with costs.

## Disposition

6. Objection has been taken as to the matter not exhausting the available remedies. The exhaustion doctrine is a fetter to parties running to court prematurely. The Black's Law Dictionary Tenth Edition states that the exhaustion doctrine requires that a party exhaust all possible administrative or preliminary remedies before seeking relief in court. On the strength of precedent, here in Kenya, where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, the Courts have held that procedure should be strictly followed before the jurisdiction of the Court is invoked. 7. The Court is seized of the letter dated 2nd October 2025. This letter indicates that the matter was yet to be concluded by the Public Service Commission. It advised the parties that they could appeal the decision made by the County Service Board which had concluded the matter. The parties are then informed that they were at liberty to file an appeal if dissatisfied with the determination of the Kisumu County Public Service Board. 8. No appeal was preferred to the Public Service Commission despite this letter from the Commission. Was the approach to this Court here in contravention of the exhaustion doctrine? The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. This encourages alternative dispute resolution mechanisms in line with Article 159 of the Constitution. The Petition in particular offends Article 234(2)(i) of the Constitution as well as section 77 of the County Governments Act together with sections 85 and 86 of the Public Service Commission Act and the Public Service Commission (County Appeals Procedures) Regulations 2022 the Petitioners having failed to exhaust the appellate mechanism provided under the law. 9. The Court finds that the doctrine was not upheld in the matter before the Court as the Petition herein is premature. One does not have the luxury to pick when to exhaust the remedies unless the matter falls within the purview of exceptions to the doctrine. This Petition seems to circumvent the appeal process the parties were clearly aware of. As such the preliminary objection is upheld and the Petition is stayed for 4 months to allow for the appeal. Should the parties be still aggrieved after the outcome this Petition can be revived.

Mention on 21st September 2026 to confirm if the Petition is for withdrawal or for further action by this Court. There will be no orders as to costs. It is so ordered. DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF APRIL 2026 NZIOKI wa MAKAU, MCI Arb. JUDGE

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