



REPUBLIC OF KENYA



KENYA LAW
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Kudheiha v Principal, Makueni County Technical Training Institute (Cause 597 of 2017) [2026] KEELRC 133 (KLR) (23 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 133 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 597 OF 2017
AK NZEI, J
JANUARY 23, 2026

BETWEEN

KUDHEIHA CLAIMANT

AND

**THE PRINCIPAL, MAKUENI COUNTY TECHNICAL TRAINING
INSTITUTE RESPONDENT**

RULING

1. In its Judgment delivered on 5th November, 2021 (Maureen Onyango, J), this Court dismissed the Claimant’s claim herein, and in so doing stated as follows:-
 - “27. In the circumstances, the Claimant has failed to prove the existence of an employer-employee relationship between the grievant in the claim, Dorothy Martins, the person who is named in the witness affidavit, Dorothy Kasisi Matheka and the Respondent herein. Since the other claims are anchored on the existence of an employment relationship between the grievant Dorothy Martins, and the Respondent, this claim lacks feet on which to stand on and is accordingly dismissed.”
2. The Claimant is not shown to have appealed against the said Judgment. After a period of approximately four years and two months, however, the Claimant filed a Notice of Motion dated 14th May, 2025 seeking the following Orders:-
 - a. That the Court be pleased to review the Judgment delivered on 5th November, 2021 on the following grounds:-
 - i. That there is a mistake or error on the face of the record.



- ii. That new and important evidence, which was not within the Applicant’s knowledge or could not be obtained with due diligence at the time, has been discovered.
 - iii. That there exists sufficient reasons to warrant review.
 - b. That the Respondent do meet the costs of the application.
- 3. The application sets out on its face the grounds on which it is brought, and is predicated on the supporting affidavit of Dorothy Kasisi Matheka/ Dorothy Martins (the grievant herein) sworn on 16th May, 2025. It is deponed in the said supporting affidavit:-
 - a. that the grievant/Applicant has not preferred an appeal against the Judgment delivered on 5th November, 2021.
 - b. that after delivery of the said Judgment, new and important evidence has come to light, which the Court did not have opportunity to address at the time of rendering the Judgment.
 - c. that at the time of employment, the grievant was using her father’s name (maiden name), Dorothy Kasisi Matheka, as it was the one on her identity card.
 - d. that on termination of the grievant’s employment, the Respondent used the name Mrs. Dorothy Martin, which is her marital name.
 - e. that it has come to the grievant’s knowledge that the advocate on record did not have the foregoing information, which could have clarified any perceived discrepancies and ensured proper identification of the parties involved.
 - f. that the application has been brought without undue delay, and that no prejudice will be suffered by the Respondent if the orders sought are granted.
- 4. Documents annexed to the said supporting affidavit include copies of the grievant’s letter of appointment/employment contract signed by both the employer (the Respondent herein) and the grievant (Dorothy Matheka), in 1987 and the termination letter dated 27th May, 2015 and addressed to the Claimant/Trade Union, referring to the grievant as Mrs. Dorothy Martin.
- 5. Also annexed to the said supporting affidavit is a copy of an affidavit sworn by Martin John Mutisya, the Claimant’s husband, on 24th September, 1997 before a Magistrate, deponing that he was married to the grievant herein, Dorothy Kasisi Matheka, under the Kamba customary law since 1985. Also annexed to the supporting affidavit is an affidavit of the grievant, sworn on 13th May, 2012, confirming that the names Dorothy Kasisi Matheka and Dorothy Martin referred to herself.
- 6. The Respondent has not filed response to the application, though shown to have been served. The application is, therefore not opposed.
- 7. The single issue for determination herein is whether the review order sought is merited.
- 8. Rule 74 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-
 - “(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the Judgment or ruling –
 - a. if there is discovery of a new and important matter or evidence which, despite exercise of due diligence, was not within the



knowledge of that person or could not be produced by that person at the time when the decree was passed or the order was made;

- b. on account of some mistake or error apparent on the face of the record;
 - c. if the Judgment or ruling requires clarification; or
 - d. for any other sufficient reason.
- (2) An application for review of a decree or order of the Court under sub-rule (1) shall be made to the Judge who passed the decree or made the order sought to be reviewed or to any other Judge if that Judge is not attached to the Court station.
- (3) A party seeking review of a decree or order of the court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or ruling or order to be reviewed.
- (4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.
- (5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.
- (6) An order made for a review of a decree or order shall not be subject to further review.”

9. The present application for review was placed before me for hearing and determination because the Judge who passed the decree/Judgment sought to be reviewed, Maureen Onyango, J, is not currently attached to Nairobi ELRC Court Station.
10. The single issue for determination in this matter is whether the review order sought by the Claimant/Applicant is merited.
11. As I preceded to point out in this Ruling, the Claimant/Applicant did not appeal against the Judgment delivered on 5th November, 2021. The grievant has deponed as much, and this fact has not been controverted as the application is unopposed.
12. Although Rule 74(1) of this Court’s aforestated Rules provides for filing of an application for review within reasonable time, the said law does not state the parameters of “reasonable time”. In my view, this issue is left to the Court to determine depending on the facts and circumstances of individual cases. Further, in my view, the Court may, in exercise of its discretionary power, which in any case must be exercised judiciously, excuse a delay such as the one in the present case, in the interest of substantive justice.
13. The grievant has, in her supporting affidavit, stated that the advocate on record had no knowledge of the existence of the documents annexed to the supporting affidavit when the decree in issue was passed. Although this sounds rather general as the grievant was/is the owner of those documents, the Claimant has established a sufficient reason/cause why the order for review should issue. It has been demonstrated that the grievant was, indeed, an employee of the Respondent from 1987 to the 2015 when her employment was terminated by the Respondent, for a period of approximately 28 years.



14. I make a finding that the prayer for review is merited. Accordingly, the Claimant's Notice of Motion dated 14th May, 2025 is hereby allowed in the following terms:-
 - a. This Court's Judgment delivered on 5th November, 2021 is hereby reviewed, and is set aside.
 - b. The suit herein shall be heard again, and shall be prosecuted within the next twelve (12) months, failing which it shall stand dismissed for want of prosecution.
15. Each party shall bear its own costs of the application.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Onwong'a for the Claimant/Applicant

No appearance for the Respondent

