



REPUBLIC OF KENYA



**KENYA LAW**  
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**Opiyo v Lake Basin Development Authority (Cause 147 of 2016)  
[2026] KEELRC 159 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 159 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 147 OF 2016  
NZIOKI WA MAKAU, J  
JANUARY 29, 2026**

**BETWEEN**

**CHARLES OCHIENG OPIYO ..... CLAIMANT**

**AND**

**LAKE BASIN DEVELOPMENT AUTHORITY ..... RESPONDENT**

**RULING**

1. Before the Court is the application dated 15<sup>th</sup> May 2025 in which the Claimant seeks a review of the judgment delivered on 14<sup>th</sup> April 2021. The application is neither anchored on any specific provision of the law nor supported by an affidavit. In it, the Claimant asserts that the Court failed to safeguard his constitutional rights under Chapter Four of *the Constitution*, failed to consider the protection accorded to public officers under Article 236, and neglected his right to fair labour practices as guaranteed under Article 41. He further alleges that the Court did not adhere to the principles of transparency and fairness, failed to take into account sections 41, 43, 44, 45, 47, 48 and 49 of the *Employment Act*, and disregarded his long service of thirty-three years. In addition, the Claimant urges the Court to revisit the question of his pension benefits, contending that he has since attained the mandatory retirement age of sixty years, served on permanent terms, and was a member of the Kenindia Assurance Pension Scheme.
2. The application was opposed by the Respondent through grounds of opposition dated 13<sup>th</sup> November 2025. The Respondent contended that the application was fatally defective, incompetent, improperly before the Court, and an abuse of the Court process for offending the mandatory provisions of the *Civil Procedure Act* and the Civil Procedure Rules. In particular, it was argued that the application contravened Order 51 Rule 1 as it was not brought by way of a Notice of Motion, Chamber Summons, or any other recognised form of motion. Further, the Respondent asserted that the application was incurably defective for want of a supporting affidavit as required under Order 51 Rule 4, thereby rendering the annexed documents inadmissible for lack of a proper evidentiary foundation.



3. The Respondent further maintained that the Claimant was improperly seeking appellate reliefs under the guise of a review. It was argued that, contrary to Order 45 of the Civil Procedure Rules, the application invited the Court to reopen, re-analyse, and reconsider issues that had already been conclusively determined on their merits. According to the Respondent, the statutory threshold for review had not been met, there being no discovery of new and important matter or evidence, no error apparent on the face of the record, and no sufficient reason to justify the exercise of the Court’s review jurisdiction.
4. It was also the Respondent’s position that the alleged violation of the Claimant’s constitutional rights under Articles 27 and 236 of *the Constitution* was misconceived and unsupported by evidence, and amounted to an attempt to re-argue the case. The Respondent asserted that Article 27 could not be invoked in isolation to overturn a lawfully rendered judgment, while Article 236 was inapplicable, had neither been pleaded nor canvassed at trial, and could not properly be introduced at the review stage.
5. In conclusion, the Respondent contended that the application merely expressed dissatisfaction with the Court’s findings, a matter that could only be addressed on appeal and not through review. It characterised the application as frivolous, vexatious, speculative, and intended to delay the final determination of the matter, and asserted that entertaining it would occasion prejudice to the Respondent. On that basis, the Respondent urged the Court to dismiss the application with costs.
6. On 22<sup>nd</sup> October 2025, the Court directed the parties to file written submissions and fixed the matter for mention on 4<sup>th</sup> November 2025. Subsequently, on 15<sup>th</sup> December 2025, Counsel for the Respondent informed the Court that it had filed grounds of opposition and sought a ruling date. By the time of writing of this Ruling, neither party had filed written submissions.

## Disposition

7. The Claimant seeks what he terms a review of the judgment of the Court made in April 2021, almost 5 years ago. Under the Employment and Labour Relations Court (Procedure) Rules 2024, a review is permitted under Rule 74. The recourse to Civil Procedure Rules either in argument or otherwise is an affront to the distinct legal regime applicable in this Court. Nevertheless, the Court has considered the application before it and in the light of Rule 74(1) Employment and Labour Relations Court (Procedure) Rules 2024 which is replicated in its entirety below:

74(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 the 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 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.
8. The Court has not discerned any new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of the Claimant or could not be produced by him at the time when the decree was passed or the order made. In addition, the Court has not discerned any



mistake or error apparent on the face of the record nor does the judgment require clarification. There is no other sufficient reason to order a review of the decision of the Court and as such the application is devoid of any merit and is dismissed with no order as to costs. The file is now marked closed.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 29<sup>TH</sup> DAY OF JANUARY 2026**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

