



**Sirma & another v National Industrial Training Authority & another
(Cause E444 of 2024) [2026] KEELRC 78 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 78 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E444 OF 2024
SC RUTTO, J
JANUARY 23, 2026**

BETWEEN

DAVID KIBET SIRMA 1ST CLAIMANT

BENJAMIN LOKOR LORUNYEI 2ND CLAIMANT

AND

NATIONAL INDUSTRIAL TRAINING AUTHORITY 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

RULING

1. What comes up for determination is the Claimants'/Applicants' Notice of Motion dated 6th October 2025, which seeks the following orders:
 1. This Honourable Court be pleased to review its Ruling delivered on 3rd October 2025 by the Honourable Lady Justice Stella Ruto, by substituting the order striking out the Claim with an order dismissing the 1st Respondent's Preliminary Objection dated 5th August 2024.
 2. This Honourable Court be pleased to set aside the orders made on 3rd October 2025 striking out this claim and, directs that the suit be reinstated forthwith and this Application be heard in open court, given the weight and sensitivity of the constitutional and procedural issues raised herein.
 3. That this Honourable Court be pleased to review, vary, and/or set aside its Orders issued on 3rd October 2025, and expressly declare that the Claim herein is not statute-barred, the operative cause of action having lawfully arisen from the 2nd Respondent's appellate determination delivered on 15th June 2023, and not from the impugned dismissal letter of 22nd December 2017; hence, limitation under Section 90 of the *Employment Act*, 2007 does not and cannot, in law or equity, attach to these proceedings.



4. Costs of this Application be borne by the Respondents.
2. The Notice of Motion is premised on the grounds set out on its face and supported by the Affidavit sworn on 6th October 2025 by David Kibet Sirma, the 1st Claimant/Applicant. Mr. Sirma contends that this Honourable Court committed a patent and material error by overlooking the Claimants' duly filed and served Grounds of Opposition and Submissions, and consequently proceeded to determine the 1st Respondent's Preliminary Objection as unopposed, contrary to the court record.
3. He avers that the said oversight deprived the Claimants of their fundamental right to a fair hearing as guaranteed under Articles 41, 47, and 50 of *the Constitution*, thereby occasioning a grave miscarriage of justice.
4. Mr. Sirma maintains that the Claimants' cause of action did not crystallize on 22nd December 2017, being the date of the initial dismissal, but rather on 15th June 2023, when the 2nd Respondent overturned the dismissals, concluded the appellate process, and rendered its decision.
5. He avers that the 1st Respondent actively participated in the appeal at the Public Service Commission and that, consequently, the doctrine of exhaustion was fully satisfied, rendering the limitation period under Section 90 of the *Employment Act* inapplicable.
6. Mr. Sirma avers that the claim, having been filed in 2024, was within the legally permissible period, and that no prejudice would be occasioned to the Respondents should the Court reopen the matter for a full hearing on the merits.
7. In the Supporting Affidavit, Mr. Sirma deposes that the Court's adoption of December 2017 as the date of accrual of the cause of action was not merely erroneous, but amounted to a fatal misapprehension of fact and law, thereby depriving the ruling of legal coherence, undermining the principle of fair adjudication, and reducing a constitutional claim into a technical nullity, contrary to Articles 41, 47, and 159 of *the Constitution*.
8. In response to the Notice of Motion, the 1st Respondent filed Grounds of Opposition dated 19th November 2025 in which it contends inter alia that:
 1. The Application does not satisfy the legal threshold for review under Rule 74 of the Employment and Labour Relations Court (Procedure) Rules. That no new evidence, error on the face of the record, or sufficient cause has been demonstrated. That the Application is essentially an appeal disguised as a review;
 2. The alleged failure by the Court to consider the Applicant's pleadings is not an "error apparent on the face of the record," but a factual issue requiring analysis. Such matters fall outside review jurisdiction.
 3. The Application improperly invites this Court to sit on appeal over its own ruling. Review cannot be used to reargue issues or introduce points that could have been raised earlier.
 4. The Court correctly determined that the claim was time-barred under Section 89 of the *Employment Act*. The statutory timeline runs from the termination date of 22nd December 2017.
 5. The PSC decision of 15th June 2023 did not create a fresh cause of action, nor does an appeal outcome reset the statutory limitation.
 6. The participation in PSC appeal proceedings does not suspend or extend the limitation. Internal processes do not constitute continuing injury, nor do they revive employment rights.



7. The claim was statute-barred at inception and was properly struck out.
8. Submissions are not pleadings and their alleged non-consideration cannot cure a claim fatally defective on limitation grounds. The outcome would remain unchanged.
9. The Applicant has not shown any prejudice that cannot be addressed through an appeal. The proper recourse was appellate review, not this Application.
9. The 2nd Respondent opposed the Claimants' Notice of Motion by way of a Replying Affidavit sworn on 17th November 2025 by Paul Famba, its Chief Executive Officer.
10. Mr. Famba avers that the Claimants were among the employees of the 1st Respondent who were dismissed on 22nd December 2017. He states that the Claimants appealed to the 2nd Respondent on 17th October 2018, but the appeal was disallowed. The Claimants thereafter filed a first application for review, which was dismissed on 9th December 2020. Subsequently, they filed a second review, and in the exercise of its discretion, the 2nd Respondent reopened the previously closed file, reviewed its decisions, and directed that the Claimants be compensated with the equivalent of 12 months' salary for unfair termination, as three years had elapsed and reinstatement was no longer possible.
11. He further avers that, upon advice of counsel for the 2nd Respondent, the law does not allow for exceptions to the prescribed statutory timelines. He adds that the application as filed does not meet the threshold to justify the Court setting aside its earlier decision, as no error apparent on the face of the record has been demonstrated.
12. In reply to the 2nd Respondent's Replying Affidavit, the Claimants filed a Further Affidavit sworn on 21st November 2021 by Mr. Sirma, the 1st Claimant.
13. Mr. Sirma deposes that their dismissal was fraudulently orchestrated through the use of falsified documents, doctored procedural minutes, concealed evidence, inconsistent testimonies, and deliberate manipulation of the 2nd Respondent by the 1st Respondent.
14. He further avers that constitutional protections prevail over statutory timelines where the administrative process itself has been tainted by fraud, bias, deceit, and procedural abuse. In Mr. Sirma's view, the mere passage of time cannot legitimize illegality, and void administrative actions cannot acquire validity through delay.
15. Mr. Sirma further states that the 1st Respondent's internal derailment schemes rendered timely adjudication impossible, preventing the 2nd Respondent from properly considering their appeals and issuing a timely appellate decision.
16. He further contends that the 2nd Respondent acted ultra vires under the PSC Act when it purported to award them one year's salary. According to him, this is a jurisdiction reserved exclusively for the Court.

Submissions

17. The Motion was canvassed by way of written submissions. On their part, the Claimants submit that the matter has remained active and that they have consistently pursued justice, with the appellate process engaging both Respondents. Accordingly, the Claimants contend that the limitation period should not be calculated from the date of dismissal, but from the date of final exhaustion of the internal review process by the 2nd Respondent.
18. The Claimants further submit that, under the *Fair Administrative Action Act*, judicial intervention is only appropriate after the exhaustion of internal reviews, statutory appeals, and administrative



remedies. They assert that they complied with this requirement, and therefore, the cause of action did not arise until the determination by the 2nd Respondent.

19. The Claimants contend that the Respondents' preliminary objection constitutes an attempt to defeat justice on a technicality, which is expressly prohibited under *the Constitution*.
20. In their further submissions, the Claimants maintain that there exists an error on record and sufficient grounds for review under Rule 74. Citing the decision in *Divecon v Samani* [1995-1998] 1 EA, they submit that the limitation period cannot commence from a void, fraudulent, or non-existent decision.
21. The Claimants further assert that non-consideration of pleadings constitutes a valid ground for review, as it arose from reliance on falsified records and misleading information. They add that the injury was continuous from 22nd December 2017 to 15th June 2023 due to the 1st Respondent's procedural sabotage.
22. The Claimants further submit that a review is a matter of right where the record has been tainted by fraud, falsification, or suppression of evidence. They further state that the 2nd Respondent advised them to seek redress before this Court after it had exhausted its appellate jurisdiction and is therefore estopped from raising issues relating to wrong forum, premature filing, lack of exhaustion, or jurisdictional defect.
23. The 1st Respondent, on the other hand, submits that this Court's power to review its own decisions is strictly limited under Section 74(1) of the Employment and Labour Relations Court (Procedure) Rules.
24. Citing *Pancras T. Swai v Kenya Breweries Limited* (2014) eKLR, *Republic v Public Procurement Administrative Board & 2 others* (2018) eKLR, and *Zablon Mokua v Solomon M. Choti & 3 others* (2016) eKLR, the 1st Respondent contends that an application for review must strictly comply with the statutory provisions governing review jurisdiction. In this regard, the 1st Respondent asserts that the Claimants' Notice of Motion does not introduce new evidence, but merely challenges the Court's reasoning on limitation and alleges non-consideration of pleadings. The 1st Respondent argues that allowing a review under such circumstances would blur the distinction between review and appeal, leading to endless re-litigation of the merits.
25. The 1st Respondent further submits that, for an error to be considered apparent on the face of the record, it must be self-evident and obvious, requiring no detailed argument or analysis.
26. In its submissions, the 2nd Respondent states that the existence of an internal review or appeal mechanism does not suspend the statutory limitation period. To support this position, it cited the decisions of *Benjamin Wachira Ndiithi v Public Service Commission & another* (2014) eKLR and *Rift Valleys Railways Limited v Hawkins Wagonza Musonye & another* (2016) eKLR.
27. The 2nd Respondent further contends that the Claimants have not demonstrated any grounds warranting the Court to review its decision.

Analysis and Determination

28. Upon considering the Notice of Motion, the parties' respective Affidavits, and their submissions, the Court has singled out the issue for determination as to whether the Claimants/Applicants have demonstrated sufficient grounds to justify a review of the Ruling delivered on 3rd October 2025.



29. Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 (ELRC Rules), sets out the circumstances under which this Court may review its orders or decisions. The permissible grounds are:
- a. discovery of new and important matter or evidence not within the knowledge of the applicant despite due diligence at the time of the original ruling;
 - b. existence of a mistake or error apparent on the face of the record;
 - c. where the judgment or ruling requires clarification; or
 - d. any other sufficient reason.
30. In the instant Application, the Claimants have asserted that the Court overlooked their Grounds of Opposition and submissions, and consequently proceeded to determine the 1st Respondent's Preliminary Objection as unopposed. In the Claimants' view, this oversight amounts to a material error of fact apparent on the face of the record.
31. Further to the foregoing, the Claimants maintain that the cause of action did not crystallize on 22nd December 2017, the date of their dismissal by the 1st Respondent, but rather on 15th June 2023, when the 2nd Respondent overturned the dismissals, concluded the appellate process, and issued its decision. Accordingly, they contend that the claim was filed within the prescribed time.
32. Revisiting the provisions of Rule 74(1) of the ELRC Rules, it is evident that the Court's jurisdiction is quite narrow, thereby restricting the scope of review.
33. In light of the scope of Rule 74(1) of this Court's Rules and the Claimants' assertions, it is clear that the grounds advanced for review in the instant matter neither demonstrate any error apparent on the face of the record nor fall within the categories envisaged under the Rule to justify a review.
34. With tremendous respect to the Claimants, the issues raised in the Notice of Motion essentially challenge the merits of the Ruling, which properly fall within the ambit of an appeal. Indeed, the Claimants are effectively asking the Court to conduct a merit-based reassessment of its decision, which amounts to the Court acting as an appellate body over its own Ruling.
35. On this point, the Court concurs and is guided by the decision of the Court of Appeal in *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR, in which it was held that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which



has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it". (Underlined for Emphasis).

36. It is discernible in the present case that the Claimants' dissatisfaction with the findings in the Ruling delivered on 3rd October 2025 may very well constitute grounds for an appeal, but does not provide a valid basis for a review.
37. I find it worth pointing out that the Claimants' assertion that the Court failed to consider their pleadings (Grounds of Opposition and submissions) is not supported by the record, as the said pleadings are neither traceable on the online filing portal nor in the Court's physical record. Indeed, they were not available to the Court at the time of writing the Ruling delivered on 3rd October 2025. It was only following the filing of the instant Application that the Claimants attached a copy of the submissions purportedly filed in relation to the Preliminary Objection, which is the subject of the Ruling delivered on 3rd October 2025.
38. All things considered, the Court finds that the Claimants have not met the threshold required for the grant of review orders under Rule 74(1) of the ELRC Rules.
39. To this end, the Application dated 6th October 2025 is dismissed, with no orders as to costs.

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

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimants/Applicants In person

For the 1st Respondent Ms. Mochoge

For the 2nd Respondent Ms. Iseme

Court Assistant Catherine

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

