

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
MISC. APPLICATION NO.474 OF 2025

ERIC MUNENE

.....**CLAIMANT/APPLICANT**

VERSUS

GRACELAND SCHOOLS.....1ST

RESPONDENT

SAMSON WAINAINA MWAURA.....2ND

RESPONDENT

GRACE NYAMBURA WAINAINA.....3RD

RESPONDENT

RULING

1. For determination is the Claimant/Applicant’s amended Notice of Motion dated 24th November, 2025, brought pursuant to Article 50(1) and 48 of the Constitution of Kenya 2010, Section 80 of the Civil Procedure Act (Cap 21, Laws of Kenya), and Order 45 Rules 1 & 2 of the Civil Procedure Rules, seeking the following reliefs: -

- a) THAT this Honourable Court be pleased to review, set aside and/or vary the directions issued by this Court on 24th November 2025, which transferred this matter to the Employment and Labour Relations Court, Nakuru, on alleged territorial grounds and the current station being overloaded.

- b) THAT this Honourable Court be pleased to hold that the Respondents' territorial objection, raised via a Replying Affidavit rather than a formal Preliminary Objection, is procedurally incompetent and irregular, and cannot form a basis for transfer
- c) THAT this Honourable Court be pleased to recognize that the Respondents have already complied with previous court orders, namely:
- i. Order dated 5th November 2025, releasing academic and professional certificates;
 - ii. Order dated 28th October 2025, filing a response within 14 days.
- d) THAT this Honourable Court be pleased to RESTORE the matter for hearing at the Nairobi Registry, being the proper jurisdiction, and allow the Applicant adequate time to respond to any jurisdictional issues.
- e) THAT costs of this application be provided for in the cause.

2. The application is supported by grounds on the face of the motion and the affidavit of **ERIC MUNENE**, the Applicant herein. The Applicant contends that the Court erred in transferring the matter to Nakuru ELRC on without affording him an adequate opportunity to respond to the Respondents' jurisdictional objection, in breach of the principles of natural justice and Article 50(1) of the Constitution.

3. It is his argument that the Respondents improperly raised a territorial jurisdiction objection through a Replying Affidavit

instead of a formal Preliminary Objection at the earliest opportunity, contrary to the holding in *Mukisa Biscuit Manufacturing Co. v West End Distributors Ltd* [1969] EA 696.

- 4.** The Applicant further states that the Respondents had already complied with prior court orders, including releasing academic and professional certificates and filing their response within the prescribed time, thereby submitting to the Court's jurisdiction. This, the Applicant argues, invokes the doctrine of approbation and reprobation, barring the Respondents from subsequently challenging jurisdiction.
- 5.** The Applicant further contends that territorial jurisdiction objections have become largely technical and less determinative in the era of electronic filing and argues that the transfer directions constitute an error apparent on the face of the record, having been issued without procedural fairness, and have caused him prejudice, inconvenience, and increased costs.
- 6.** The Applicant finally asserts that sufficient grounds exist for the Court to exercise its inherent jurisdiction to review, set aside, or vary the transfer orders earlier made.
- 7.** The Respondents opposed the application vide a Replying affidavit sworn by Samson Mwaura dated 11th December, 2025. The Respondents contend that the application is misconceived, fatally defective, devoid of merit, and an

abuse of the court process, and should therefore be dismissed with costs.

- 8.** They state that the Applicant seeks to review the Court's directionary order issued on 24th November 2025, transferring the matter to the Employment and Labour Relations Court at Nakuru. Relying on Order 45 Rule 1 of the Civil Procedure Rules, the Respondent argues that a party seeking review must demonstrate discovery of new and important evidence not available at the time of the order, an error apparent on the face of the record, or any other sufficient reason.
- 9.** They aver that the Applicant has failed to satisfy any of these statutory grounds and is instead attempting to have the Court sit on appeal over its own discretionary decision.
- 10.** The Respondent submits that it is settled law that a court cannot sit on appeal over its own decision and that review is not intended to challenge the merits of a ruling, as held in *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR.
- 11.** The Respondents argue that the present application discloses no new evidence, no error apparent on the face of the record, and no sufficient reason under Order 45 of the Civil Procedure Rules, and hence the Court lacks jurisdiction to entertain the review.
- 12.** The Respondent further relies on Section 29 of the Employment and Labour Relations Court Act, which

empowers the Court to issue administrative directions on hearing venues and transfer of matters to ensure efficient and effective administration of justice. They contend that the cause of action arose outside Nairobi, and the parties and witnesses are based outside Nairobi, making Nakuru ELRC the appropriate forum. They aver that the Applicant's own pleadings confirm that the dispute concerns substantive employment matters falling within the jurisdiction of the Nakuru Employment and Labour Relations Court.

13. It is further argued that transfer between divisions or registries of the same Superior Court is an administrative and discretionary function that cannot be challenged through review unless illegality or procedural impropriety is shown, which has not been demonstrated.

14. The Respondents maintain that the Applicant is challenging the correctness of the Court's reasoning rather than identifying a procedural error, and that dissatisfaction with the merits should be pursued on appeal, not review. They aver that the application is therefore described as an impermissible collateral attack on a lawful judicial direction.

15. Finally, the Respondent dismisses the Applicant's claims of hardship due to travel and costs as unsubstantiated and, in any event, not valid grounds for review under Order 45, noting that similar inconvenience would arise for the Respondents if the transfer order were reversed.

16. Parties canvassed the application by way of written submissions, which have been duly considered.

Determination

17. The singular issue for determination is whether the Applicant has satisfied the legal threshold for review of this Court's directions issued on 24th November 2025, transferring this matter to the Employment and Labour Relations Court (ELRC) at Nakuru.

18. The jurisdiction of this Court to review its own orders is anchored in the Employment and Labour Relations Court Act and Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024. The law demands that a party seeking review must demonstrate discovery of new and important matter or evidence which, after due diligence, was not within their knowledge or could not be produced at the time the order was made, an error apparent on the face of the record, or for any other sufficient reason.

19. The principles governing review are settled. In ***National Bank of Kenya Ltd v Ndungu Njau, (1997) eKLR***, the court stated thus:-

“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...”

- 20.** The Applicant has not pointed out any new and important matter that was unavailable at the time the transfer directions were issued. His arguments revolve around procedural propriety and fairness, rather than newly discovered evidence.
- 21.** On whether there is an error apparent on the face of the record, it is now settled that an error apparent on the face of the record must be self evident and not one that requires elaborate argument to establish. It must be an obvious and patent mistake.
- 22.** The Applicant contends that the Court erred by transferring the matter without affording him an opportunity to respond to the territorial jurisdiction objection, allegedly offending the rules of natural justice espoused in Article 50(1) of the Constitution.
- 23.** A challenge to the form in which the objection was raised, as the Applicant did herein, does not necessarily render the issue incompetent if the substance of jurisdiction was properly brought to the Court’s attention. The Court was therefore entitled to consider the issue.
- 24.** The Applicant’s dissatisfaction appears directed at the correctness of the Court’s decision to transfer the matter,

not at a manifest clerical or patent legal error. That is not the province of review.

- 25.** The Applicant argues that the Respondents, having complied with earlier orders (release of certificates and filing of response), are estopped from challenging jurisdiction under the doctrine of approbation and reprobation. Matters of jurisdiction cannot, in my view, be conferred by acquiescence, waiver, or conduct of parties. If a court lacks territorial or subject matter jurisdiction, the parties cannot cure that defect by participating. Compliance with interim orders does not in any way amount to irrevocable submission to jurisdiction.
- 26.** Further, the Applicant's argument that in the era of e-filing, territorial jurisdiction objections are technical and obsolete is unfounded on the premise that while technological advances have eased filing logistics, statutory and administrative structures governing court stations remain operational. Under Section 29 of the Employment and Labour Relations Court Act, the Court retains administrative authority to allocate and transfer matters to ensure efficient and effective administration of justice.
- 27.** Transfer between registries of the same superior court is largely an administrative and discretionary function, and such discretion will only be interfered with on review if shown to have been exercised illegally or capriciously.

28. In the end, I find and hold that the Applicant's Amended Notice of Motion dated 24th November 2025, is devoid of merit, and is for dismissal.

29. It is hereby dismissed with costs to the Respondents.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5TH DAY OF MARCH, 2026.

C. N. BAARI
JUDGE

Appearance:

N/A for the Claimant/Applicant

N/A present for the Respondents

Ms. Esther S-C/A