



**Obare v Kenyatta University & another (Civil Appeal (Application)  
85 of 2013) [2022] KECA 1344 (KLR) (2 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1344 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 85 OF 2013  
MSA MAKHANDIA, AK MURGOR & J MOHAMMED, JJA  
DECEMBER 2, 2022**

**BETWEEN**

**FRED OBARE ..... APPLICANT**

**AND**

**KENYATTA UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**KENYATTA UNIVERSITY COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for review of Judgment of the Court of Appeal at Nairobi (Makhandia, Onko & Murgor, JJ. A) dated 19th October, 2017 in Nairobi Civil Appeal No. 85 of 2013)*

**RULING**

- 1 In his application presented to the Court on 30<sup>th</sup> July 2018, the applicant, Fred Obare, seeks to review and set aside the judgment of this Court delivered on 19<sup>th</sup> October, 2017 and in lieu thereof uphold the judgment and decree of the Industrial Court in Cause No. 240 of 2009 - Fred Obare vs. Kenyatta University & Another delivered on 14<sup>th</sup> December, 2012.
- 2 In the application, in which provisions of the *Civil Procedure Act* and the Civil Procedure Rules invoked do not apply in this Court, the applicant, who was the respondent in the appeal, asserts that following the judgment and decree of the trial court, the respondents had complied with the same and reinstated him, as well as deposited the decretal sum in a joint interest-earning account as ordered by the trial court. That although they had reinstated him, the respondents had unlawfully demoted and deployed him to their Kitui Campus without subsistence, accommodation, travel and baggage allowances as provided for in the Employment Contract and Regulations. Faced with this dilemma, he had opted to resign. That it was an error therefore on the part of counsel who were present in court at the hearing of the appeal not to inform the court of the aforesaid compliance.



- 3 In his affidavit dated 30<sup>th</sup> July, 2018 in support of the application, the applicant, deposes that he was unlawfully suspended from employment while working for the respondents; and, after suing the respondents in the Industrial Court, the predecessor to the current Employment and Labour Relations Court, he was reinstated and awarded damages of KShs. 2,316,240.00 being full salary from 2009 to the date of the judgment.
- 4 Aggrieved by the judgment and decree aforesaid, the respondents lodged an appeal to this Court with the result that the judgment and decree of the trial court was overturned by this Court. To the applicant, this was water under the bridge as the judgment and decree of the trial court had been satisfied, hence the need for review of this Court's judgment.
- 5 The application is opposed by the respondents through an affidavit sworn by Prof. Paul Okemo, the 1<sup>st</sup> respondent's Vice-Chancellor (Administration). He deposes that being dissatisfied with the judgment of the trial court, they preferred an appeal against the said judgment and decree. After the successful appeal, the respondents had the monies deposited in the joint interest-earning account held at I & M Bank Limited as a condition for stay of execution issued by this Court, withdrawn and transferred to their advocates. That the applicant had not satisfied the requirements for review as he had not demonstrated that the impugned decision had occasioned injustice or a miscarriage of justice which had eroded public confidence in the administration of justice, and that no appeal lies against the decision in issue; that the appeal was necessary in order to resolve the determinations arrived at by the trial court. Further, that it is not true that the applicant had resigned as his resignation was rejected, hence he was still in employment at the time of the hearing and determination of the appeal by this Court; and, lastly that, the applicant had not faulted any finding of this Court in the appeal hence the application should be dismissed for lacking merit.
- 6 The parties filed written submissions. In his submissions, the applicant merely reiterated the contents in the application and the supporting affidavit. Suffice to add that he relied on the case of *Belinda Murai & Others vs. Amoi Wainaina* [1981] eKLR for the proposition that he should not be locked out of the seat of justice; and the case of *Philip Chemwolo & Another vs. Augustine Kubede* (1982-88) KAR 103 for the proposition that though mistakes are made, parties should never be made to suffer due to those blunders.
- 7 The respondents in their submissions reiterate that, while this Court has jurisdiction to review its decisions, the principle of finality should not be disregarded in dispute resolutions. While citing the cases of *Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others* [2007] eKLR and *Benjob Amalgamated Limited & Another vs. Kenya Commercial Bank Limited* [2014] eKLR, the respondents insist that this Court should consider the principal of finality against the aspect of review. Further, it is their submission that the applicant has not disclosed the nature of injustice occasioned by this Court's judgment for the reasons that they had the right to appeal against the judgment of the trial court and further, that the request to have the decretal amount deposited in an interest-earning account was on the basis of a conditional stay that had been granted by this Court. Thus, the respondents had all the right to retrieve the money after a successful appeal. Lastly, that the grounds relied on by the applicant in support of the application do not form part of those that are considered for the invocation of this Court's residual jurisdiction of review. It should also be borne in mind that the threshold required for review is so high and ought to be exercised in exceptional circumstances. That the applicant was attempting to re-litigate the appeal through the back-door by this application and the same ought not to be allowed therefore.
- 8 We have considered the application, the various affidavits, arguments and the law. As this Court stated in the case *Benjob Amalgamated Ltd vs. Kenya Commercial Bank Limited* [2014] eKLR, the residual



jurisdiction of the Court to review its own decisions “should be invoked with circumspection”. In that case, the Court, after reviewing decisions from different jurisdictions on the question of review had this to say:

“The jurisprudence that emerges from the case-law from the aforementioned jurisdictions shows that where the Court is of final resort, and notwithstanding that it has not explicitly been statutorily conferred with the jurisdiction to reopen a decided matter, it has residual jurisdiction to do so in cases of fraud, bias, or other injustice with a view to correct the same and in doing so the principles to be had regard to are, on the one hand, the finality principle that hinges on public interest and the need to have conclusiveness to litigation and on the other hand, the justice principle that is pegged on the need to do justice to the parties and to boost the confidence of the public in the system of justice. As shown in the various authorities, this is jurisdiction that should be invoked with circumspection and only in cases whose decisions are not appealable (to the Supreme Court).”

- 9 The applicant wants this Court to review the judgment for the sole reason that his counsel on record at the time the appeal was heard, failed to inform the court that the judgment and decree of the trial court had been fully complied with on account of his reinstatement and the deposit of the decretal sum in a joint interest-earning account. In our view, the deposit of the monies in a joint interest-earning account was not about the satisfaction of the judgment and decree as claimed by the applicant. It was purely in compliance with the terms of the conditional stay issued by this Court as it awaited the outcome of the appeal.
- 10 Further, the fact that the applicant had been reinstated and transferred to another station was not a bar to the respondents pursuing their appeal in this Court.
11. Either way, we do not find the above grounds merit a review of this Court’s judgment. In fact, there is nothing in the application and the submissions that has been pointed out that warrants the exercise of our limited jurisdiction to review the judgment of this Court. There is no claim of fraud, bias or injustice occasioned to the applicant by the judgment and decree. We also agree with the respondents that the principle of finality in litigation should be respected. Parties should not be allowed to litigate and re-litigate forever under the guise of review.
- 12 This, therefore, is not a fit and proper case for the exercise of this Court’s limited jurisdiction to review its decision. There is no merit in the application dated 30<sup>th</sup> July, 2018 which is accordingly dismissed with costs to the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF DECEMBER, 2022.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**A. K. MURGOR**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**



*I certify that this is a True copy of the original*

*Signed*

**DEPUTY REGISTRAR**

