



Mogaka v Young Women Christian Association of Kenya & 2 others (Cause 541 of 2023) [2025] KEELRC 344 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 344 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 541 OF 2023
S RADIDO, J
FEBRUARY 13, 2025**

BETWEEN

MARY MOGAKA CLAIMANT

AND

YOUNG WOMEN CHRISTIAN ASSOCIATION OF KENYA . 1ST RESPONDENT

NATIONAL BOARD AND TRUSTEES, YOUNG WOMEN CHRISTIAN ASSOCIATION 2ND RESPONDENT

NATIONAL GENERAL SECRETARY, YOUNG WOMEN CHRISTIAN ASSOCIATION 3RD RESPONDENT

RULING

1. In a Ruling delivered on 4 April 2024, the Court struck out the Cause herein for being time-barred.
2. The Court held:
The Claim before me is therefore time barred and is for striking out, but granted the Respondent owes the Claimant salary for days worked since she is not a slave, I will not order any costs against her. The Respondent must pay her salary. Sum total of the foregoing is that the suit is struck out with no order as to costs.
3. The Claimant attempted to demand payment of the salary arrears and this prompted the Respondents to file a Motion with the Court on 5 June 2024, seeking orders:
 - i. ...
 - ii. The Court be pleased to review and set aside the following parts of its Ruling of 4th April 2024:
 - (a) The line declaring that ... ‘ the Respondent owes the Claimant salary for days worked...’ and that ‘the Respondent must pay her salary.’



(b) The order denying the Respondents costs of the suit.

- iii. Costs of this application be provided for.
4. According to the Respondents, the impugned parts of the Ruling constituted an error apparent on the face of the record and lacked any legal basis.
 5. Mary Mogaka (the Claimant) filed a replying affidavit in opposition to the Motion on 29 August 2024.
 6. In the affidavit, the Claimant deponed that the Court had preserved her substantive rights despite striking out the Cause; the Court was deliberate and conscious when ordering the payment of salaries; that substantive justice had to triumph over procedural or technical gaps; that payment of earned salary was a fundamental right and that the Motion was a waste of time.
 7. The Court gave directions on the Motion on 6 November 2024.
 8. The Respondents filed their submissions on 13 January 2025 (should have been filed and served before 22 November 2024). The Claimant did not file her submissions.
 9. The Court has considered the Motion, affidavits and submissions.
 10. The Court of Appeal in the *Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Ltd* (1989) eKLR set out what a Court of law should do after a finding that it had no jurisdiction.
 11. The Court held:

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
 12. The Court herein held it had no jurisdiction, but went ahead to determine the substantive merits of the dispute before it.
 13. The question gnawing at the heart of this Court is whether it is open to it, a Court of concurrent jurisdiction to review the decision.
 14. Regrettably, this Court is of the view that what the Court did is beyond an error apparent on the face of the record which it can correct through the review jurisdiction.
 15. The Court is equally of the view that if the order issued by the Court lacked a legal basis, then it cannot be made right through the review jurisdiction.
 16. Further, denial of costs is not an order which this Court can remedy through the review jurisdiction.
 17. Perhaps, the Respondents' avenue lies through an appellate jurisdiction.

Orders

18. The Motion dated 4 June 2024 is dismissed with costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE



Appearances

For Claimant Mose Nyambega & Co. Advocates

For Respondents Carrey Joseph Advocates

Court Assistant Wangu

