



**Anyuna v Board of Management Maasai Girl's Secondary School & another
(Cause E015 of 2022) [2025] KEELRC 1105 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1105 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E015 OF 2022
AN MWAURE, J
APRIL 4, 2025**

BETWEEN

GEOFFREY OKUMU ANYUNA CLAIMANT

AND

**BOARD OF MANAGEMENT MAASAI GIRL'S SECONDARY
SCHOOL 1ST RESPONDENT**

TEACHERS SERVICE COMMISSION 2ND RESPONDENT

RULING

Introduction

1. The Claimant/Applicant, acting in person, filed a Notice of Motion dated 18th December 2024 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. The Honourable Court be pleased to give clarification with regards to the orders issued on 6th February, 2024
 3. The Honourable Court be pleased to issue further orders or directions to facilitate the full implementation of the orders issued on 6th February 2024
 4. Costs of this application be in the cause
2. The application is expressed to be brought under Rule 74(c) of the Employment and Labour Relation Court (Procedure) Rules 2024, section 20 of the *Employment and Labour Relations Court Act*, Article 159 of *the Constitution* and all other enabling provisions of the law.



Claimant/Applicant's case

3. The Claimant/Applicant avers that the Honourable Court delivered its judgment on 6th February 2024 in his favour and awarded the following reliefs:
 - a. The declaration that the termination of the Claimant's employment was wrongful, unfair and unlawful.
 - b. The Claimant be reinstated in employment without loss of benefits and promotion with effect from the date of judgment.
 - c. The Respondent to pay the costs of the suit.
4. The Claimant/Applicant avers that he is aggrieved by the orders issued by the Honourable Court therefore seeking clarification of the orders as provided under Rule 74 of the Employment and Labour Relations Court (Procedure) Rules 2024.
5. The Claimant/Applicant avers that he is aware that the court order for his reinstatement without loss of benefit and order of promotion was issued effective from 6th February 2024 being the date of judgment.
6. The Claimant/Applicant avers that the Respondent communicated to him that his salary arrears and allowance from the date of interdiction from November 2019 up to January 2024 would not be processed and paid citing the content of the court order.
7. The Claimant/Applicant avers that section 49(3) of the *Employment Act* is clear that once an employee has been reinstated, he or she should be retreated as if his or her employment had not been terminated.
8. The Claimant/Applicant avers that he has greatly suffered economic hardship from the year 2019 since he was interdicted and the Respondent's refusal to fully implement the court order further aggravates his suffering.
9. The Claimant/Applicant avers that the Respondent will not suffer any prejudice if this Honourable Court grants the prayers sought.

2nd Respondent's replying affidavit

10. In opposition to the application, the 2nd Respondent filed a replying affidavit sworn by Kenneth Marangu, the Ag. Director in charge of Human Resource Management & Development of the Respondent institution dated 30th January 2025.
11. The 2nd Respondent avers that the application is misconceived, frivolous, and an abuse of the court process. The application is bad in law, incompetent and fatally defective as it is based on misrepresentations and misapprehension of the law.
12. The 2nd Respondent avers that the application has been camouflaged as an application for review seeking to re-open the case to litigate matters that were already concluded.
13. The 2nd Respondent claims that the Claimant/Applicant is asking this Honourable Court to reconsider its own judgment, specifically in relation to prayer No. 3, which seeks further orders on a matter that has already been concluded and fully implemented. This, according to the 2nd Respondent, constitutes a gross abuse of the court process and should not be entertained by this Honourable Court.



14. The 2nd Respondent avers that the Claimant/Applicant's application for review is an afterthought, filed after an inordinate delay of 10 months, and also accuses the Claimant/Applicant of failing to disclose material information to the court.
15. The 2nd Respondent highlights that the judgment, delivered on 6th February 2024, emphasized the Claimant's age and the practicability of securing alternative employment, resulting in an order for his reinstatement with full benefits and promotion opportunities. The 2nd Respondent avers that it complied with the judgment by assigning the Claimant to his current school.
16. The 2nd Respondent avers that the Claimant/Applicant's reinstatement was with effect from 6th February 2024, the date of the judgment and he was put back on the payroll and paid his salary and allowance.
17. The 2nd Respondent avers that the Claimant/Applicant argued that he was entitled to be paid his salary arrears from November 2019 to January 2024. However, the 2nd Respondent noted that the judgment explicitly ordered reinstatement effective 6th February 2024, and contended that if the court had intended to award unpaid salary arrears from interdiction to reinstatement, it would have explicitly stated so.
18. The 2nd Respondent avers that the Claimant/Applicant was employed as a Graduate/Secondary Teacher II at TSC Grade 7, which was re-calibrated to Grade C2 under a CBA with KUPPET.
19. The 2nd Respondent further avers that the Claimant/Applicant was eligible for promotion after three years in the initial grade and was promoted to Secondary Teacher 1, Grade C3, in March 2019.
20. The 2nd Respondent avers that promotions beyond the common cadre are competitive, based on available positions and merit-based interviews.
21. The 2nd Respondent avers that at the time of the Claimant/Applicant's interdiction on 29th November 2019, and dismissal on 15th October, 2021, as he was serving as a Secondary Teacher 1, Grade C3, had not applied for any promotion, and was not eligible for a common cadre promotion.
22. The 2nd Respondent states that the Claimant/Applicant was reinstated to his previous grade of Senior Teacher 1, Grade C3, following the court's orders of February 6, 2024. However, the 2nd Respondent states that it has complied with the court's orders and maintains that the Claimant/Applicant is not entitled to any promotion.
23. The 2nd Respondent states that it entered into a consent on 5th July 2024, with the Claimant/Applicant to withdraw the applications dated 23rd April 2024, and 3rd May 2024, and communicated this to the Claimant/Applicant's then advocates, Messrs Gakuhi Chege & Associate Advocates.
24. The 2nd Respondent contended that the court did not intend to award the Claimant/Applicant a promotion unless he was entitled or eligible and further stated that the judgment by the Honourable Court is clear, rendering the application baseless and incapable of being granted, and urge the court not to issue orders in vain.
25. The 2nd Respondent avers that the application lacks merit and urged this Honourable Court to dismiss it with costs.
26. Parties were directed to file their respective written submissions but at the time of writing this ruling, the Claimant/Applicant did not file his written submissions.



2nd Respondent's written submissions

27. The 2nd Respondent relied on Rule 74 (1) of the Employment and Labour Relation Court (Procedure) Rules 2024 which provides as follows:

“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.”

28. The 2nd Respondent contended that the application aims to alter the judgment, as the Claimant/Applicant failed to present new grounds to invoke Rule 74 of the ELRC Procedure Rules, 2024. The application disguises itself as a review, seeking to reopen litigated matters, which breaches Section 7 of the *Civil Procedure Act*. The 2nd Respondent relied on the case of *Abdulkadir A Khalif V Principal Secretary Ministry of Lands & Physical Planning & 4 others; National Land Commission & another (Interested Parties)* [2020] eKLR the court held that The principle of res judicata holds that a judgment or ruling, once final and conclusive, cannot be re-litigated in subsequent proceedings unless they are appellate in nature. Any fact or right determined in the earlier judgment is protected by estoppel. The court further clarified that the power of review is limited to correcting patent errors of law or fact that are obvious and do not require elaborate arguments, or for any analogous sufficient reason. Attempts to seek a review for a fresh hearing, re-arguments, or correction of a previously erroneous view are considered an abuse of the court's review powers.

29. The 2nd Respondent submitted that the Claimant/Applicant failed to adduce evidence to show any error on the face of the record according to Order 45 of the Civil Procedure Rules and Rule 74(1) of the ELRC Procedure Rules. The 2nd Respondent contended that the Claimant/Applicant being dissatisfied with the judgment was required to appeal and not review. In *Abdulkadir A Khalif V Principal Secretary Ministry of Lands & Physical Planning & 4 others; National Land Commission & another (Interested Parties)* (Supra) the court stated that review proceedings are distinct from appeals and are limited to correcting errors apparent on the face of the record. Reassessing evidence or re-evaluating how the judge applied or interpreted the law falls under appellate jurisdiction, which is not allowed in a review. The court emphasizes that jurisdictional issues, even if decided incorrectly, can only be addressed through an appeal. Thus, the plea for review is dismissed as it would improperly require the court to act as an appellate body over its own decision.

30. The 2nd Respondent relied on the case of *National Bank of Kenya V Ndungu Njau* [1997] eKLR the court expressed itself concerning an error or omission apparent on the face of record stating that a review may be allowed to correct a self-evident error or omission by the court that requires no elaborate argument. It is not a valid ground for review that another judge might have taken a different view, or that the court misinterpreted the law or reached an erroneous legal conclusion. Misconstruing a statute or legal provision does not justify a review.



31. The 2nd Respondent submitted that the judgment is very clear and seeking further orders would amount to re-opening the case for further litigation thus res judicata. The 2nd Respondent contended that the judgment was fully implemented and urged this Honourable to find the application lacks merit dismissing it with costs.

Analysis and determination

32. The court has meticulously gone through the application, replying affidavit as well as the submissions, and holds the issue for determination is whether the application before this Honourable Court is merited.
33. Rule 74(1) of the ELRC Procedure Rules 2024 has been reiterated in the earlier part of the ruling on the review.
34. In this instant case, the Claimant/Applicant is seeking clarification of the judgment delivered by the Honourable Court (Wasilwa J) on 6th February 2024. The Claimant/Applicant alleges that he was not paid his salary arrears from the year 2019 up to 6th February 2024. The court will rely on sections 107, 108 and 109 of the Evidence Act which provides as follows:

“ 107

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall be on any particular person.”

35. The Claimant/Applicant was not paid his salary arrears for the lost years from 2019 to 6th February 2024. The judgment order read:-

“The Claimant is hereby reinstated in employment without loss of benefits and promotions with effect from date of this judgment.”

There would be no loss of benefits if the court meant from the date of judgment. The date of judgment referred to reinstatement and promotion. But the loss of benefits was clearly from the time he was terminated to the time of reinstatement.

That is the clear interpretation of the judgment delivered on 6th February 2024.

The court therefore holds that as far as promotion of the Claimant is concerned the same cannot be backdated as there will be no basis or criteria for such promotion. As far as any further promotion is concerned from the same will depend on effort and qualification of the Claimant. He will have to apply and to justify his qualifications for promotion.



36. As for the payment of withheld salaries the Claimant is entitled to that as the court had said in the judgment that there were to be no losses. The Respondent did pay the Claimant his salary from the date of 6th February 2024 meaning the day of Judgment.

If the Claimant was not to incur any losses that was from the date of termination. Section 49(3)(a) of Employment Act provides as follows:

“(a) reinstate the employee and treat the employee in all respects as if the employees employment had not been terminated;”

37. In the case of Lokorito Wasike -Vs- Kenya Power & Lighting Company (2018) eKLR the court held: -

“The employer is bound to comply with reinstatement order by allowing the employee to resume duty as reinstated and pay full salary and other due benefits from the date of the impugned removal or dismissal (being the date of reinstatement).”

38. In that case and guarded by wording in the judgment and the law the court is of the firm view that the Claimant is entitled to any withheld salaries and allowances from 29th November 2019 to January 2024.

39. The application by the Claimant is merited as it required clarification and the court has endeavoured to clarify the same and all withheld and unpaid salaries and allowances from the Respondent to the Claimant from the date of his interdiction are due to him. The promotion will be as per the Respondents laws and policies on promotion.

40. As for costs the court orders each party to meet their respective costs of the application.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 4TH DAY OF APRIL, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

