



Commission for Human Rights and Justice v Kenya Fishing Industries Corporation; Nyaberi & another (Interested Parties) (Petition 013 of 2024) [2025] KEELRC 1090 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1090 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION 013 OF 2024
M MBARŪ, J
APRIL 3, 2025

BETWEEN
COMMISSION FOR HUMAN RIGHTS AND JUSTICE PETITIONER
AND
KENYA FISHING INDUSTRIES CORPORATION RESPONDENT
AND
DR MILKA O. NYABERI INTERESTED PARTY
PUBLIC SERVICE COMMISSION INTERESTED PARTY

RULING

1. The respondent filed an application dated 25 February 2025 under the provisions of Section 74 [Rule] of the Employment and Labour Relations Court (Procedure) Rules, Order 45 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act* seeking orders,

The court be pleased to review and or set aside the judgment dated 13 February 2025
Costs be provided for.
2. The application is supported by the affidavit of Evelyn Njoki Kagoi, Senior State Counsel, attending for the respondent in the conduct of the matter. She avers that the judgment herein had an error apparent on the record, and the court did not consider the evidence by the respondent and the Replying Affidavit dated 6 November 2024, together with the arguments through written submissions and case law dated 27 January 2025. Had the court considered the responses by the respondent, the determination and judgment may have been different. There is crucial material and evidence from the respondent that must be considered.



3. Kagoi avers that in the judgment herein, the court notes that the respondent attended court and agreed to file a response but failed to comply. Under page 3 of the judgment, in deciding, the court finds that the respondents did not file a response or written submissions.
4. These findings are in error on the face of the record, as the respondents responded to the petition on 7 November 2024 and were served. The respondents filed written submissions and a list of authorities on 28 January 2025. These were filed after court attendance on 20 January 2025, and the court allowed 7 days to file these records.
5. Kagoi avers that part of the evidence the respondents submitted is that the petitioner is not a registered entity with the Public Benefit Organization Authority. Had the court considered the evidence presented by the respondent, the judgment may have been different.
6. The petitioner is in the process of obtaining a decree based on the judgment herein, and unless the judgment is set aside, the respondents will suffer irreparable loss and damage.
Only the interested parties attended these proceedings.
The petitioner did not file a response or attend the oral hearing.
7. The respondent submitted that they filed responses to the petitioner and challenged the petitioner's non-registration as an entity under the Public Benefits Organization Authority. The omission of the Replying Affidavit, submissions, and list of authorities in the analysis of the judgment, whereas these had been filed, resulted in an error apparent on the face of the record. It will serve the interests of justice to include the records filed by the respondent.
8. Ms. Kagoi also submitted that the office of the Attorney General has observed in several other matters that their filed records are not accessible on the CTS and have been omitted. This matter has been brought to the attention of the Judiciary and is being addressed.

Determination

9. Under Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, a party is allowed to seek a review of the judgment and court orders where,
 - (1) 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 a 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.
10. In this case, the respondent asserts that there is an error apparent on the face of the record where it filed a response, written submissions, and a list of authorities, but these are observed as not filed in the court determination.

I have accessed and assessed the CTS and found that;

On 8 November 2024, the respondent filed a Notice of Appointment;



On 8 November 2024, the respondent filed a Response to the Amended Petition;

On 18 December 2024, the respondent filed the Replying Affidavit;

On 28 January 2025, the respondent filed written submissions;

On 28 January 2025, the respondent filed the List of Authorities.

11. The office of the Attorney General is one agency allowed to file court documents without payment. The CTS is configured to accept these documents without payment. Still, there are errors in how this information is processed vis-à-vis approval and how the information is relayed for the judge to access the filed records without payment.
12. As noted in the judgment delivered on 13 February 2025, despite due diligence to analyse the records filed, the court did not access the records filed by the respondent, despite these documents having been filed in good time. The matter is now brought to the court's attention, and on a reasonable basis, the purpose of Rule 74 of the Court Rules is addressed, and the error is apparent. It should be remedied, and the judgment is set aside to allow the court to consider the material and records filed by the respondent.
13. This is a principle well recognized by courts and applied over time to correct an error apparent on the face of the record as held in *National Bank Of Kenya Limited v Ndungu Njau* [1997] KECA 71 (KLR) 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. See *Anthony Gachara Ayub v Francis Mahinda Thinwa* [2014] KECA 623 (KLR) and *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited, Communications Commission of Kenya & Kenya Broadcasting Corporation* [2020] KECA 633 (KLR) where the court held that the errors contemplated under Rule 74 of the Court Rules or Order 45 of the Civil Procedure Rules should not be errors of law but the record.
14. In this case, the respondent highlighted the apparent error on the record and the omission of analysis of the filed documents.
15. The application dated 25 February 2025 with merit and is hereby allowed. Judgment delivered on 13 February 2025 is hereby set aside to enable parties to attend and address the court on the filed records.

No orders on costs.

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

