



**Situma v Bungoma County Assembly Service Board(CASB) & 2 others  
(Cause E003 of 2021) [2025] KEELRC 1340 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1340 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE E003 OF 2021  
DN NDERITU, J  
MAY 8, 2025**

**BETWEEN**

**MARTIN ADAMS WAMUKOTA SITUMA ..... CLAIMANT**

**AND**

**THE BUNGOMA COUNTY ASSEMBLY SERVICE BOARD(CASB) .... 1<sup>ST</sup>  
RESPONDENT**

**SPEAKER/CHAIRMAN OF THE BUNGOMA (CASB) ..... 2<sup>ND</sup> RESPONDENT**

**CLERK/SECRETARY OF THE BUNGOMA (CASB) ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**I. Introduction**

1. In a notice of motion (the application) dated 22nd November, 2024 the claimant/applicant, acting in person, is seeking for the following orders –
  1. That this Honourable court be pleased to review or set aside its orders issued on 27<sup>th</sup> September 2023.
  2. That this court grants such other or further relief as it may deem fit and necessary in the circumstances.
2. The application is expressed to be brought under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1(a) & (b) of the Civil Procedure Rules and based on the grounds stated on the face of it. It supported with the affidavit of the applicant sworn on even date.
3. In response to the application the respondents, through Omundi Bw'Onchiri Advocates, filed grounds of opposition dated 4th December, 2024 raising the following grounds of opposition –



- a. That the application is frivolous, vexatious and an abuse of the due process of court and the same ought to fail with costs.
  - b. That the application fails to meet the requirements set out under Section 80 of the Civil Procedure Act CAP 21 Laws of Kenya read together with Order 45 of the Civil (Amendment) Produce Rules 2020 and hence the same is for dismissal.
  - c. That litigation has to come to an end.
4. In reply to the grounds of opposition, the claimant filed a replying affidavit sworn by himself on 9th December, 2024 with several annexures thereto.
  5. By consent, the application was canvassed by way of written submissions. The claimant filed his written submissions dated 30th January, 2025 and supplementary submissions of even date. Counsel for the respondent filed submissions dated 17th January, 2025.

## II. The Evidence

6. In the supporting affidavit it is deposed that on 27th September, 2023 when he was being cross-examined the court, suo motto, made an order for issuance of summons to two witnesses and thereafter adjourned the matter.
7. It is further deposed that the court acted ultra vires as the issue of the authenticity of the decree certificates held by the claimant was not the subject of the trial and that, in any event, the court had no jurisdiction to deal with that issue. It is stated that in issuing the said summons the court acted against the constitutional and statutory provisions to wit Article 165(3)(a) of the Constitution, Order 16 Rule 1 of the Civil Procedure Rules, and Section 12(1) of the Employment and Labour Relations Court Act.
8. The claimant reiterated the foregoing position in the replying affidavit to the respondents' grounds of opposition.
9. The respondents' case is contained in the grounds of the opposition and the written submissions by their counsel.

## III. Submissions

10. The claimant submitted that the court misdirected itself by ordering that summons to be issued for the vice chancellor, University of Hertfordshire in the United Kingdom, to give evidence on the authenticity of the claimant's degree certificate yet this was not an issue in the show-cause letter or the letter of dismissal. It is further submitted that no such witness had been named by the respondents or statements filed from them.
11. It is further submitted that the authenticity of the claimant's degree certificate had not been pleaded by the respondents and the same did not arise during the pretrial conference.
12. Based on the foregoing the claimant listed the following issues for determination –
  - i. Whether the Respondents' unfilled submissions are admissible in this court.
  - ii. Whether the claimant's application is defective for failure to cite the exact date that the order was issued.
  - iii. Whether the application is fatally defective on account of not attaching the order sought to be reviewed.



- iv. Whether the respondents' failure to file a replying affidavit to the claimant's review application is fatal.
  - v. Whether the claimant's review application is in compliance with section 80 of the Civil Procedure Act Order 45 Rule 1(a)&(b) of the Civil Procedure Rules.
  - vi. Whether the impugned order made on 31<sup>st</sup> May 2023 is unlawful and ought to be set aside ex debito justitiae.
  - vii. Whether the impugned order is ultra vires jurisdiction.
  - viii. Whether the claimant is guilty of laches.
13. It was submitted that the submissions by the respondents' counsel were not properly filed as they were not reflected on the electronic portal and as such the court is urged not to consider them in making a ruling.
  14. It is further submitted that the orders sought to be reviewed were made on 31st May, 2023 and extended on 24th July, 2023 and that the citing of 27th September, 2023 by the claimant as the date on which the impugned orders were made was purely inadvertent and not intended to mislead the court or prejudice the respondents. The court is urged to consider the error by the claimant as inadvertent and of no legal consequences – minimis non curat lex.
  15. On the second issue, the claimant cited the Court of Appeal in Peter Kirika Githaiga & Another V Betty Rashid (2016) eKLR in supporting the argument that it is not a mandatory requirement that an application for review shall contain a copy of the order or ruling sought to be reviewed. The court is urged to apply the oxygen principles under Article 159 of the Constitution to find and hold that the failure by the claimant to attach the impugned order or ruling is not fatal. It is submitted that the said lack of the order or ruling did not prejudice the respondents as they have fully responded to the substance of the application.
  16. Further, it is submitted that the failure by the respondents to file a replying affidavit rendered the depositions in the supporting affidavit unopposed. In that regard the claimant cited the Court of Appeal in Daniel Kibet Mutai & 9 Others V Attorney General (2019) eKLR. It is submitted that grounds of opposition can only address matters of law and not facts. It is thus urged that the facts as asserted by the claimant stand unchallenged. The claimant further supported this argument with the decision in Kennedy Okumu Ogola V Nation Media Group & Another (2021) eKLR.
  17. According to the claimant the court made an error in making the impugned orders which should now be corrected through application of the slip rule. It is re-emphasized that the issue of the validity of the claimant's degree certificate was not in issue and hence the court made an error in issuing summons for witnesses to testify on the authenticity of the same.
  18. Further, it is submitted that the said summons offended Order 16 Rule 1 of the Civil Procedure Rules as it was made long after the pre-trial conference. It is submitted that the court had no jurisdiction over that issue as the order was made after the claimant had already been terminated. It is further submitted that the authenticity and validity of the said certificate did not form a ground for the dismissal of the claimant and as such the order for summons was clearly issued in error.
  19. Further, it is submitted that the order for issuance of the impugned summons was made during the cross-examination of the claimant and the same clearly prejudiced his cause.



20. The claimant further submitted that the respondents did not file a counter-claim or a set-off to his claim and their insistence of issuance of the summons amounted to amending their defence or response to the claim through the back door. The court is reminded that the authenticity or validity of the claimant's degree certificate was not a ground of the disciplinary proceedings and or the dismissal. It is submitted that the respondents are guilty of material non-disclosure as they never raised the issue until the claimant was under cross-examination.
21. It is further submitted that in the circumstances, the court lacked the jurisdiction to order for issuance of summons as it did on 31st May, 2023. It is submitted that the court has no capacity to deal with an issue where it lacks jurisdiction and the court is reminded of the decisions in Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited (2012) eKLR and Owners of Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd (1989) eKLR.
22. It is the claimant's further submission that the application for review has been filed without unreasonable delay as the cause was reinstated on 26th June, 2024 and the application filed after leave was granted on 24th September, 2024.
23. The so referenced supplementary submissions by the claimant dated 30th January, 2023 are a replica of the foregoing and the court finds no need in re-evaluating or restating the same issues.
24. In the written submissions dated 17th January, 2025 counsel for the respondents submitted that no orders were made by the court on 27th September, 2024 capable of being reviewed as sought by the claimant. It is submitted that the application is thus frivolous, vexatious, oppressive, and an abuse of court process.
25. It is further argued that by the claimant not attaching the order or the ruling to be reviewed the application was rendered otiose and defective. In this regard the respondents' counsel cited Suleiman Murunga V Nilestar Holdings Limited & Another (2015) eKLR.

#### **IV. Issues For Determination**

26. In my considered view, there is only one main issue for determination in this application – Should the court allow the application and grant the orders sought?
27. Upfront, it is important to make it clear that this court (ELRC) is created under Article 162(2)(a) of *the Constitution* and operationalized under the *Employment and Labour Relations Court Act* and the rules of procedure made thereunder. Under Section 12(1) of the above Act, "The court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other law which extends jurisdiction to this court relating to employment and labour relations".
28. Section 27 of the above Act allows the making of rules of procedure for the court. The rules currently in force are the Employment and Labour Relations Court (Procedure) Rules 2024. The previous rules that are now revoked and replaced with the above were promulgated in 2016.
29. Rule 74 provides as follows –
  - (1) A person who is aggrieved by a degree 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.
- (2) An application for review of a degree or order of the court under sub-rule (1) shall be made to the judge who passed the degree or made the order sought to be reviewed or to any other judge if that judge is not attached to the court station.
  - (3) A party seeking review of a degree or order of the court shall apply to the court by way of notice of motion supported by an affidavit and shall file a copy of the judgment or decree or ruling or order to be reviewed.
  - (4) The court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.
  - (5) Where an application for review is granted, the court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.
  - (6) An order made for a review of a decree or order shall not be subject to further review.
30. This court takes the considered view that except where it is so specifically provided for, the [Civil Procedure Act](#) and the rules made thereunder do not apply to this court. This is so because the constitutive Act of this court and the rules made thereunder, alluded to above, adequately provide for the substance and procedure applicable in hearing and determination of matters that come before it. This view is buttressed by the specific provisions in the rules of this court that invite specific application of the Civil Procedure Rules. For example, Rule 10(2) of the Rules provides that “Any person who wishes to institute judicial review proceedings shall do so in accordance with Sections 8 and 9 of the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules.” Likewise, Rule 73(2) provides that “Rules on execution or stay of execution of an order or decree of the court shall be in accordance with the Civil Procedure Rules.”
31. The point made here is that, as a specialized court dealing with employment and labour relations matters only, the ELRC has its own special and unique procedure which, to a large extent, is devoid of the technicalities that may apply to other courts under the [Civil Procedure Act](#) and the Rules thereunder.
32. Therefore, an application for review to this court ought to be premised upon Rule 74 that is reproduced verbatim above. To that extent, the application by the claimant does not conform with the law and the procedure applicable in this court.
33. Further, Rule 74(3) as reproduced above obligates the party applying for review to avail a copy of the judgment, ruling, or order that is sought to be reviewed. Again, the claimant did not attach a copy of the ruling or order sought to be reviewed and this renders the application procedurally defective.
34. The application expressly seeks for review of orders purportedly made on 27th September, 2023. In his submissions and the replying affidavit to the grounds of opposition, the claimant admitted that no orders were made on the said date but did not seek to amend the application. Instead, the claimant



argued and submitted that the error was a minor one capable of being amended by the court applying the oxygen principle under Article 159 of *the Constitution*.

35. For the court to fully appreciate what the claimant is complaining about and whether the impugned orders of the court may be reviewed, the court has to examine the raw handwritten record to establish when and the circumstances under which the alleged order for issuance of summons was issued.

36. The court notes that on its own motion, on 31<sup>st</sup> May, 2023, the court, Keli J, issued the following orders –

Summons to issue to the vice-chancellor Great Lakes University of Kisumu to appear before the court to produce the documents from the university produced in court and to the vice-chancellor of University of Hertfordshire to produce the documents from the said university on 24<sup>th</sup> July 2023.

It is so ordered.

37. At the point when the court issued the above order the claimant was under cross-examination. The matter has not proceeded for further hearing ever since as the claimant applied to be allowed to apply for review of the orders issued on 31<sup>st</sup> May, 2023 and the application filed is now the subject matter of this ruling.

38. Contrary to the allegations by the claimant, the court issued the said orders suo motto and it was thus neither misled nor misdirected by either party. Rule 58 of the rules of this court provides as follows –

The court may, either on its own motion or at the request of a party, summon for examination any person who has information relevant to any of the issues before it.

39. The law as stated above confirms that this court has powers to suo motto order or summon the appearance and attendance of any person to give evidence or information in court. That discretion by the court is unfettered as it is intended to enable the court to arrive at a fair and just conclusion of the matter before it. To that extent the court finds no lawful reason for the claimant to fault the court on the issuance of the summons to the said witnesses to attend court. Further, the court finds no other sufficient cause or reason for reviewing the said order by the court.

40. However, Keli J left the station in September, 2024 and hence the parties have to elect either to start the matter afresh or proceed from where Keli J reached.

41. The court has this far said enough in demonstrating that the application by the claimant has no merits. The same is thus denied and dismissed.

## V. Orders

42. The court makes the following orders –

- a. The notice of motion by the claimant dated 22nd November, 2024 is hereby dismissed for lack of merits.
- b. Costs in the cause.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 8<sup>TH</sup> DAY OF MAY 2025.**

.....

**DAVID NDERITU**



**JUDGE**

