



Kenya Engineering Workers Union v Met-Al Masters Limited (Cause E627 of 2022) [2025] KEELRC 1660 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1660 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E627 OF 2022
B ONGAYA, J
JUNE 5, 2025

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
MET-AL MASTERS LIMITED RESPONDENT

RULING

1. The claimant/applicant filed a ‘review notice of motion’ dated 21.02.2025 under Section 16 of the [Employment and Labour Relations Court Act](#), 2016. It sought the following orders:
 - i. That, the Honourable Court deem fit to hear this application on priority basis and or allow parties to proceed by way of written submissions.
 - ii. That, the Honourable Court deem fit to review the judgment delivered on 19.12.2024.
 - iii. That, the Honourable Court deem fit to grant the Orders as per the applicant/claimant's prayers as per her memorandum of claim dated 09.03.2022, prayers of service gratuity and leave allowance.
 - iv. That, cost of this Application be met by the respondent herein.
 - v. That, any other prayer the Honourable Court may deem fit to grant.
2. The application was made on the reasons set out therein and supported by the affidavit of Wycliffe Amakombo Nyamwata of 21.02.2025. It was urged as follows:
 - a. The Honourable Court delivered Judgment in the matter on 19.12.2024, disallowing the claimant’s claim in totality.
 - b. The Honourable Court did find that the fixed-term contracts of the grievants must have lapsed, contrary to the fact that the one-year fixed contract were only issued once terminating



the implied term permanent contracts that were never paid for as per the grievants' NSSF statements and bank account statements attached to the memorandum of claim at pages 19 to 29 (marked App. WAN 4).

- c. The Honourable Court erred by finding that the termination was as a result of fixed-term contracts lapsing, without taking into account that after the payment of the alleged terminal dues on 29th and 30th June 2019, the grievants herein continued with implied contracts until September 2019, when they were unfairly, unlawfully and unprocedurally declared redundant, as the respondent continued to pay for their NSSF contributions.
 - d. New evidence has emerged that the respondent engaged in dirty tricks by payment of salaries via Mpesa from July to September 2019.
 - e. If the orders sought are not granted, the claimants/applicants shall suffer irreparable damages and loss.
3. The respondent's grounds of opposition dated 24.04.2025 was filed through Njenga Sang & Company Advocates. They opposed the claimant's application dated 21.02.2025 on the following grounds:
- a. The application is frivolous, vexatious, an abuse of the court process, and is intended to cause unnecessary anxiety. The application constitutes an attempt to unduly influence the Court.
 - b. The application is fatally defective for having been filed after an inordinate and unexplained delay. The Judgment sought to be reviewed was delivered more than three (3) months ago, yet the claimant has only now approached the Honourable Court for review. No reasonable or satisfactory explanation has been offered for the delay in bringing the application, and the same offends the principles of equity and the established legal requirement that such applications be made without undue delay. The delay is inexcusable and amounts to an abuse of the court process.
 - c. The claimant has come to court with unclean hands and is guilty of material non-disclosure and misrepresentation. The claimant seeks a blanket review of the judgment on grounds that fail to disclose the full and accurate position. Notably, some of the individuals cited as having been affected by the Judgment are, in fact, still under active employment with the respondent. This crucial fact has been deliberately withheld or misrepresented in the application. It is trite law that a party seeking the equitable relief of review must make full and frank disclosure of all material facts. The Claimants' failure to do so disentitles them to the exercise of this Honourable Court's discretion in their favour.
 - d. The claimant has failed to provide clarity and justification regarding the alleged payments said to have been made by the respondent. The application refers to payments purportedly made to certain individuals, yet it is entirely unclear what those payments are for. The amounts do not appear to constitute salary, and the claimant has not furnished any explanation or documentation to substantiate the nature or basis of such payments. This lack of clarity further undermines the credibility of the application and highlights its speculative and unsupported nature.
 - e. The claimant has not met the threshold of orders of review by this Honourable Court.
 - f. The claimant has not demonstrated that there is any mistake or error apparent on the face of the record warranting a review of the judgment.
 - g. The so-called errors the claimant is alluding to are not errors on the face of the record.



- h. The errors are not self-evident but would require an elaborate argument to be established and a long, drawn-out process of reasoning.
 - i. The Judgment sought to be reviewed was issued upon full consideration of the facts, evidence and submissions of all parties, and there is no justification for disturbing the same.
 - j. The application lacks merit and should be dismissed with costs to the respondent.
4. The claimant/applicant filed the further affidavit sworn on 15.05.2025 by Wycliffe Nyamwata, averring as hereunder:
- a. The seven grievants in the matter are not in the service or employment of the respondent herein, and the alleged Wycliffe Odhiambo and Dennis Nyagaki are not among the seven grievants.
 - b. The money sent to the grievants by the respondent's directors, namely, Avtar Kundi, Sukhuinder and Teklor Kundi for the three months being July, August and September 2019, was meant for salaries as the respondent continued to pay their NSSF contributions.
 - c. There is an error on the face of the Judgment by finding that the grievants were on fixed-term contracts which came to an end at the end of June 2019, yet they continued in employment.
 - d. The employer is the one that keeps records yet alleged putting the grievants on short-term contracts that have been disputed, but failed to file any other contracts apart from the ones for 2019 that were done once by declaring the implied contracts redundant without payment hence the one demanded for.
 - e. The Safaricom Statements attached to the claimant's application are new evidence that was not within the reach of the claimant.
 - f. The grievants having lost their source of income, could not afford the town life, hence moved to their rural homes without phones, which caused the delay. In addition, the Judgment was delivered when people and the Court were proceeding for the Christmas Holidays.
5. The parties filed their respective submissions. The Court has considered the respective positions and returns as follows:
- a. There is no shown new or fresh evidence which with due diligence could not be provided at the hearing. The Court finds that the grievants all along knew that they had been paid by M-pesa after their term contracts lapsed and nothing stopped them from providing such evidence at the hearing. Further, it is doubtful that such evidence would have changed the Court's finding in the judgment that the term contracts lapsed and which term contracts had breaks making the claims and reliefs of severance, notice payment, leave and 12 months' compensation to collapse.
 - b. While alleging fresh evidence, the Court considers that the applicant is essentially asking the Court to change the reasoning in the judgment in the manner and reasons the Court gave arriving at the findings. It is that such would be a dissatisfaction to justify an appeal and not a review. The Court further observes that the parties consented to a determination of the suit based on the pleadings and documents filed and in which event the judgment was purely based on documents and blurred gaps that may have benefited from testimonies of the witnesses. In any event, the parties are bound by their consent.



- c. The Court upholds the respondent's case that no known ground for review has been established in the instant application. The application is amenable to dismissal. The parties are in continuing or forming industrial relationship and each party to bear own costs.

In conclusion the application is hereby dismissed with orders each party to bear own costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 5TH JUNE, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

