



**Omido v Board of Management, Namudera Mixed Secondary School
(Petition 31 of 2017) [2024] KEELRC 817 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 817 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 31 OF 2017**

**S RADIDO, J
APRIL 17, 2024**

BETWEEN

NAPHTALY OMIDO CLAIMANT

AND

**BOARD OF MANAGEMENT, NAMUDERA MIXED SECONDARY
SCHOOL RESPONDENT**

RULING

1. Before the Court is a Motion dated 18 January 2024 by Naphtaly Omido (the applicant) seeking orders:
 - i. THAT this Court be pleased to reopen this file and grant me leave to file this application.
 - ii. THAT the Honourable Court be pleased to:
 - (a) Reviewing its decision of dismissing my application to be granted leave to appeal out of time the Respondent's 22nd May 2009 adverse decision on me.
 - (b) Do find that the Respondent herein committed an act of tort on me occasioning the delay in my appeal his adverse verdict on me dated 22nd May 2009.
 - (c) Summon the then Chair of the Respondent Board, one Moses Wanyama Barasa, accompanied by the original minutes of the Respondent Board dated 25th September 2009, to attest their authenticity.
 - (d) Review a determination by the High Court in Kakamega dated 16th May 2017 that I had an inordinate delay that was not properly explained with respect to appealing the Respondent's verdict on me dated 22nd May 2009.



- (e) Do find time for me to be declared to have an inordinate delay with respect to appealing the 22nd May 2009 adverse verdict on me only begins counting after a Board member of the then Respondent Board attests that minutes supplied to me dated 25th September 2009 are indeed a true copy of what the Respondent Board decided that day.
 - (f) Find the verdict 2 (two) of the Respondent's Board verdict on me dated 3rd June 07 is untrue and misleading information about me.
 - (g) Direct the deletion of untrue and misleading information about me in (e) above from my files in all offices of the Respondent copied them to pursuant to Article 35(2) of *the Constitution* of Kenya, 2010.
 - (h) Any other orders that this Honourable Court deems just and expedient.
2. The reasons advanced by the applicant in support of the Motion were that there was an error apparent on the face of the record at prayer 2(a) in the Ruling delivered on 4 October 2018; that an Appeal which the applicant withdrew had been reinstated; the Respondent had committed an act of tort on the applicant; the decision of the High Court, Kakamega was founded on technicalities; the Court had declined to summon the Respondent's then Board Chair in its Ruling delivered on 1 February 2023; that the delay alluded to in paragraph 8 of the Ruling delivered on 29 November 2023 was occasioned by pending proceedings before the Court of Appeal and that Respondent's Board differently constituted and meeting on 25 September 2009, had disowned the dispute.
 3. The Respondent filed Grounds of Opposition to the Motion on 27 February 2024 contending that the application was frivolous, vexatious and an abuse of the court process; was res judicata and that the application did not meet the legal threshold set out by Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.
 4. On 4 March 2024, the Court directed the parties to file and exchange submissions.
 5. The applicant's submissions were not on record by 15 March 2024, the agreed timeline. Strangely, the applicant filed a replying affidavit in response to the Respondent's submissions on filed on 18 March 2024.
 6. The Court has considered the Motion, supporting affidavit and submissions and come to the view that the Motion is not only without merit but is frivolous, vexatious and an abuse of the Court process for the following reasons.
 7. One, the alleged errors in the Ruling of 4 October 2018 have been within the knowledge of the applicant. He has brought the application after nearly 6 years.
 8. Two, the alleged tort committed upon the applicant by the Respondent was the subject of disputation and a judgment was delivered on 15 March 2018. If the applicant was dissatisfied with the decision, his recourse lay to the Court of Appeal within the prescribed timelines and not a purported review application 6 years later.
 9. Three, the question of summoning the Respondent's Board Chair has been the subject of judicial determination in previous applications filed by the applicant.
 10. Four, it would serve no purpose to summon the then Board Chair when the dispute between the parties at this level of the judicial chain has been determined on the merits.



11. Five, this Court has determined with finality the dispute which was presented before it by the applicant. It would serve no legal purpose to reopen the proceedings further, in other words, the Court is functus officio.
12. Lastly, the applicant has not demonstrated that the application comes within the ambit of the Court's review jurisdiction under Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

Orders

13. The Motion dated 18 January 2024 is dismissed.
14. Litigation must come to an end. The applicant herein wants to keep the Court busy with application after application which have no merit as demonstrated by the 6 Rulings already on record.
15. The Respondent is awarded costs of the application and the applicant is barred from filing any further application without leave of the court, and only after settling the costs awarded after taxation.

Delivered virtually, dated and signed in Kisumu on this 17th day of April 2024.

Radido Stephen, MCI Arb

Judge

Appearances

Claimant/applicant in person

For Respondent Cavin Anyuor, Advocate, Teachers Service Commission

Court Assistant Chemwolo

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