



**Kamanja & 2 others (Suing on Their Own Behalf and on Behalf of the 26 Workers of the Respondent) v Board of Management, Highway Secondary School (Employment and Labour Relations Cause 192 of 2018) [2024] KEELRC 1334 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1334 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 192 OF 2018**

**MN NDUMA, J  
MAY 30, 2024**

**BETWEEN**

**DANIEL NDAIGA KAMANJA ..... 1<sup>ST</sup> CLAIMANT  
JACKSON KUTSWA SHIRAKU ..... 2<sup>ND</sup> CLAIMANT  
GEOFFREY KIRAGU KARIUKI ..... 3<sup>RD</sup> CLAIMANT  
SUING ON THEIR OWN BEHALF AND ON BEHALF OF THE 26 WORKERS  
OF THE RESPONDENT**

**AND**

**BOARD OF MANAGEMENT, HIGHWAY SECONDARY  
SCHOOL ..... RESPONDENT**

**RULING**

1. The respondent/applicant filed an application dated 27/11/2023 seeking for an order in the following terms:
  1. Spent
  2. Spent
  3. That this honourable court be pleased to lift/vacate/set aside the court’s ruling made and delivered on 27<sup>th</sup> September, 2022.
  4. That this honourable court grants leave to the applicant to file its computation as directed by Honourable Court prior to delivery of the above-mentioned ruling dated 27<sup>th</sup> September, 2022.
  5. That the costs of the application be in the cause.



2. The application is premised on grounds 1 to 18 set out on the face of the application and buttressed in the supporting affidavit of Irungu P. Nduati a Chief Principal of Highway Secondary School.
3. The grounds of opposition may be summarized that on 9/4/2020, Hon. Ongaya J. delivered an interlocutory judgment in the following terms:
  - a. --
  - b. --
  - c. The order of specific performance hereby issued compelling the respondent to forthwith specifically perform its obligations under the stated circulars of 29/08/2006; 13/08/2008; 25/06/2012 and 13/07/2017 and in particular to pay the claimants' amounts found owing and outstanding.
4. On 25/5/2021, a ruling was delivered by Hon. Mathews N. Nduma J. dismissing the application to set aside interlocutory judgment. The court directed the parties to file computation to enable the court make a determination on quantum.
5. That counsel on record for the respondent failed to seek for instructions from the respondent school and so computation was done without the input of the respondent and the court confirmed computation filed by the claimants in its ruling dated 26/5/2022 for a total sum of Kshs.9,253,665/=. The said computation became an annex of the judgment dated 9/4/2020.
6. The claimants began execution of the judgment but warrants of execution were set aside on 8/6/2023.
7. That counsel Amelle Chesinya who represented the respondent during the trial has since left the office of Attorney General and the new counsel on record Ruth J. Rop now represents the respondent.
8. That the claimant will not suffer any irreparable harm that cannot be compensated by way of damages if this application is allowed.
9. That the respondent upon perusal of the computation confirmed by the court discovered the following: -
  - a. The computation as adopted by the court indicates incorrect job groups as compared to the payroll hence arriving at wrong figures.
  - b. The computation as per the school shows that the school has complied with all circulars and has even made an overpayment in some instances.
  - c. Some employees separated from employment at various times during the period covered by the circulars yet the computation adopted by the court shows that no employee separated from employment during the period covered by the circulars.
10. That it is in the interest of justice and fairness that the application be granted and allow the applicant to file the computation as directed by the court in its ruling dated 27<sup>th</sup> September 2022.
11. The application is opposed vide grounds of opposition and replying affidavit dated 6<sup>th</sup> December 2023 which may be summarized as follows:-

That it would be gross miscarriage of justice to allow the application for review the same having been disguised as an application seeking leave to file computation.

That the issues raised under paragraph 13 of the supporting affidavit are the same as those under paragraph 15, 16, 17, 18 and 19 of an earlier application dated 31<sup>st</sup> October 2022.



That the Respondent was well aware of the entire court process and even instructed its advocate to file the application dated the 22<sup>nd</sup> October 2022 but did not deem it fit to apply for review of computation and cannot be allowed to hide behind the mistake of the advocate.

That the Respondent was given ample opportunity to file its computation but failed to utilize the same and cannot therefore turn around and seek sympathy of the honourable court.

12. The application does not disclose any justifiable grounds for grant of orders to set aside the ruling delivered on 29/9/2022. The discretion of the court ought not to be used to obstruct or delay justice.
13. That the respondent has filed multiple applications to evade justice having failed to defend the suit before judgment was delivered and having failed to file any computation as directed by the court thereafter.
14. That the applicants were given numerous opportunities to file computation which they failed to do until the court delivered the exparte ruling. That no computation has been done to date. That the applicant cannot be allowed to hide behind a mistake of their advocate without showing what steps they took to defend the suit and to file the computation thereafter see *Pyramid H. Anlies Limited versus James Omingo Nyaranga and 3 others* [2019] eKLR.
15. The application be dismissed with costs.

#### **Determination**

16. The court has carefully considered the deposition by the parties and the submissions filed thereof. The issues for determination are: -
  - a. Whether the application raises substantive issues that ought to be addressed by the court.
  - b. Whether there will be miscarriage of justice if the application is not allowed.
  - c. Whether the respondent will suffer irreparable damage if the application is allowed.
17. In the ruling of the court dated 26<sup>th</sup> May 2022 in which the court adopted the computation dated 21/6/2021 filed by the claimant/respondent, the court noted:

The claimants have filed their computation dated 21<sup>st</sup> June, 2021 whereas the respondents have failed to file their computation despite opportunity given to them by the court to do so on several occasions.”
18. The respondent did not challenge the ruling of the court until the claimants/respondents served warrants to execute the decretal sum against the assets of the respondent which process was injunctioned by the court by a ruling dated 8<sup>th</sup> June 2023.
19. Indeed, the court had earlier in a ruling dated 25/5/2021 dismissed an application by the applicant herein, seeking to have the judgment dated 9<sup>th</sup> April 2020 set aside. The judgment was entered after formal proof, the respondent having failed to defend the suit.
20. In the said judgment by Ongaya J. delivered on 9<sup>th</sup> April 2020, the court had made specific findings and issued orders:
  - a. - -



- b. The declaration that the respondent's conduct herein in particular the willful failure, refusal, delay or neglect to implement directorate of personnel management circulars of 29/08/2006, 13/08/2008 and 25/06/2012 respectively as issued by the Ministry of State for Public Service to raise or reflect on the salaries of the claimants herein is unconscionable and amounts to flagrant breach and anticipatory breach of the employment agreement in terms of the stated circulars.
- c. The order of specific performance is hereby issued compelling the respondent to forthwith specifically perform its obligations under the stated circulars of 29/08/2006, 13/08/2008 25/06/2012 and 13/07/2017 and in particular to pay the claimants' amounts found owing and outstanding."
21. The application is now appealing the judgment of the court delivered on 9/4/2020 through the back door, having failed to defend the suit in the first place and file any computation as directed by the court in a subsequent ruling and the ex parte computation adopted as a judgment of the court in a ruling dated 9/4/2020.
22. The issues being litigated by the applicant in the present ruling are res judicata having been determined by Ongaya J. in the judgment of the court delivered on 9/4/2020 in respect of which no appeal was filed by the applicant.
23. The court specifically found in the judgment that the respondent did not comply with the stated, specific circulars which the applicant in the present application purports to have complied with contrary to the judgment of the court which has not been appealed against.
24. The application is misconceived and an abuse of the court process and the same is dismissed with costs.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY, 2024.**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Ms. Rop for Respondent/applicant

Mr. Were for Claimant/respondent

Mr. Kemboi, Court Assistant

