



Ogola v Teachers Service Commission (Judicial Review Application E018 of 2024) [2024] KEELRC 1613 (KLR) (26 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1613 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E018 OF 2024**

S RADIDO, J

JUNE 26, 2024

IN THE MATTER OF ARTICLES 1, 2(5), 2(6), 10, 19, 20, 21, 22, 23, 27, 41, 47, 50, 232, 236, 237 AND 249 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF SECTIONS 4, 11, 13, 14, 20, 21, 33 AND 34 OF THE TEACHERS SERVICE ACT

AND

IN THE MATTER OF REGULATIONS 139, 146, 147, 149, 150, 151, 152, 153, 154 AND 156 OF THE TEACHERS SERVICE COMMISSION CODE OF REGULATIONS FOR TEACHERS, 2015

AND

IN THE MATTER OF VIOLATION AND INFRINGEMENT OF THE RIGHT TO FAIR HEARING

BETWEEN

GILBERT OYIER OGOLA APPLICANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. Gilbert Oyier Ogola (the applicant) filed a Summons against the Teachers Service Commission (the Commission) on 19 February 2024, seeking orders:

i. ...



- ii. The applicant be granted leave to apply for an order of mandamus directing the Teachers Service Commission to form an Ad Hoc committee known as the Teachers Service Review Committee for purposes of considering and determining the application for review arising from the Disciplinary Decision made in DISC. CASE NO. 1662/05/2015/2016/6 vide the impugned dismissal letter dated 17th October 2016.
 - iii. The costs of this application be provided for.
2. The grounds in support of the Summons were that the applicant had through a letter dated 23 January 2023 requested the Commission to review a decision made by a disciplinary panel on 17 October 2016; that the applicant received the dismissal letter from the County Director through his advocate on 6 December 2022; the request for review was made within 90 days of receipt of the dismissal letter; that the Commission had failed to form the Review Committee as stipulated in the Code of Regulations for Teachers, 2015; that the failure to form the Review Committee denied the applicant a right to a fair hearing and that the Commission was bound by the national values and principles.
3. Upon service of the Summons, the Commission filed a Notice of Preliminary Objection on 20 May 2024, contending:
 - i. The Claim herein is statute-barred pursuant to the provisions of section 90 of the *Employment Act* as read together with section 3(2) of the *Public Authorities Limitation Act* hence the Court lacks jurisdiction under the law to entertain the claim.
 - ii. The applicant has not complied with the provisions of regulation 156(4) and (5) of the Code of Regulation for Teachers, 2015 to warrant issuance of the orders sought hence the claim offends the provisions of section 9(2) of the *Fair Administrative Action Act*, cap 7 Laws of Kenya.
4. When the parties appeared in Court on 23 May 2024, the Court directed the parties to file and exchange submissions.
5. The Commission filed its submissions on 28 May 2024 and the applicant on 20 June 2024.
6. The Court has given due consideration to the Summons, Notice of Preliminary Objection, and submissions.
7. It is not in dispute that the applicant was dismissed through a letter dated 17 October 2016. What is disputed is when he received the dismissal letter or became aware of the dismissal.
8. The applicant asserted in his affidavit that he became aware of the dismissal after the Commission communicated with his advocate on 6 December 2022.
9. Despite making the assertion in the affidavit, the applicant did not exhibit a copy of the communication from the Commission to his advocate to support the narration that he became aware of the dismissal on 6 December 2022.
10. Nevertheless, section 9(2) of the *Fair Administrative Action Act* and Regulation 156(4) and (5) of the Code of Regulation for Teachers gave the applicant a window of 90 days to challenge the decision of the Commission to dismiss him.
11. The applicant posited that he lodged the request for review on 23 January 2023.
12. The Code of Regulation for Teachers imposes a levy of Kshs 2,000/- upon the filing of a review request. The Commission contended that the applicant had not paid the levy.
13. The applicant did not rebut the contention that he had not paid the levy.



14. To all intents and purposes, the applicant's purported request for review was and is non-existent without payment of the requisite levy.
15. The applicant did not also respond to the assertions that the Review Committee he sought the Court to compel the Commission to constitute is a standing committee which has been in existence throughout from the time of dismissal.
16. It is inconceivable that the applicant only became aware of his dismissal in 2022 after a dismissal in 2016. The applicant has not satisfactorily explained where he was after the disciplinary hearing and whether he was reporting periodically to his immediate supervisor through whom communication from the Commission should have been channelled.
17. The Court sees tale-tell signs that the instant application for leave was a well-crafted design to run away from the prescriptive limitation law on contractual actions, considering that the wrong or legal injury in contention accrued on 17 October 2016.

Order

18. The Summons dated 14 February 2024 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 26TH DAY OF JUNE 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Oyugi Ochieng & Associates Advocates

For Respondent Issac Ochieng, Advocate, Teachers Service Commission

Court Assistant Chemwolo

