



**Kenya Private Universities Workers Union v KAG East Africa (Cause 308 of 2020) [2024] KEELRC 2044 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2044 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 308 OF 2020  
B ONGAYA, J  
JULY 26, 2024**

**BETWEEN  
KENYA PRIVATE UNIVERSITIES WORKERS UNION ..... CLAIMANT  
AND  
KAG EAST AFRICA ..... RESPONDENT**

**RULING**

1. The respondent herein filed the preliminary objection dated 09.04.2024 through Nchoe Jaoko & Co. Advocates, opposing the claimant's notice of motion application dated 28<sup>th</sup> November 2023 on the following grounds:
  - a. The application offends the principle of res judicata as provided for in Section 7 of the [Civil Procedure Act](#), Laws of Kenya; in view that there were two previous similar applications regards the same subject matter;
    - i. That there was the notice of motion dated the 16<sup>th</sup> of November which was heard, canvassed by way of written submissions and ruling delivered by Ongaya J on the 7<sup>th</sup> of July 2023.
    - ii. That previously the applicant had filed an application dated 12<sup>th</sup> May 2022, which was withdrawn by the Applicant.
  - b. That the Honourable Court has no jurisdiction to entertain the application dated 28<sup>th</sup> November 2023 as it has become functus officio having fully discharged its duty in the matter and a Judgment delivered by Maureen Onyango J on the 10<sup>th</sup> December 2021.
  - c. That in whole, the application is vexatious and frivolous litigant and the proceedings herein, an abuse of the court process. In the circumstances the application dated the 28<sup>th</sup> November 2023 herein should be struck out with costs.



2. The claimant, through the application dated 28<sup>th</sup> November 2023, seeks to review the Honourable Court's Judgment dated 10<sup>th</sup> December 2021 on grounds that there is new and relevant evidence. The Judgment found as follows:
  - a. For employees declared redundant, the respondent failed to serve the statutory one month notice per section 40(1) (a) and (c) upon the union and local labour officer that was required to be issued at least one month before 08.06.2020 when the redundancy letters were issued. Thus, the redundancies were irregular and therefore unlawful.
  - b. Having found that the unpaid leave, redundancies and retirements occurred before the date of filing suit, the orders of injunction sought by the claimant were overtaken by events, as the Court cannot stop that which had happened.
  - c. The order for payment of wages withheld during the period of unpaid leave was not granted because the claimant had not particularised the same.
  - d. Besides the order that the redundancy was unlawful for want of notification to both the union and labour officer and for failure to set out the selection criteria for the employees declared redundant, all other prayers in the claim fail for want of proof and are dismissed.
  - e. Each party to bear own costs.
3. In the application dated 28.11.2023 the claimant prayed for the order, "That this Honourable Court be pleased to set aside and/or vary the Ruling made on the 10<sup>th</sup> December, 2021 as there is discovery of new and relevant evidence for the Court's consideration for variation and /or setting aside of the aforementioned Court Orders." It was urged for the claimant that the learned judge made an error in the ruling delivered on 10.12.2021 by dismissing the claim in its entirety when there was on record a valid recognition agreement between the parties. Further, the application had been made without unreasonable delay. The claimant had discovered new and relevant evidence to warrant variation of the orders. It was stated in the supporting affidavit that on 10.12.2021 the Court dismissed the claim on the basis that there was no evidence of employees who were declared redundant and if they were paid any dues or at all. The claimant now had the information on the payments made to redundant employees and which the respondent had withheld. The supporting affidavit has exhibited a recognition agreement, table on list of redundancy support staff, list of essential staff unpaid leave, and summary report being a list of retired staff. The lists are not signed or dated.
4. The Court issued directions that the application and preliminary objection be canvassed by way of written submissions. Both parties filed their written submissions. The Court has considered the parties' respective positions and submissions and returns as follows:
  - a. The record shows that the applicant filed a similar application for review dated 16.11.2022. The application was dismissed with costs in a ruling delivered on 07.07.2023. The Court finds that indeed the application is chained by the principle of *res judicata*. The preliminary objection will succeed upon that ground.
  - b. The court returns that in the circumstances, the instant application will be dismissed with no costs.
5. In conclusion, the preliminary objection dated 09.04.2024 is upheld and the application dated 28 .11. 2023 dismissed, and, with no costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 26<sup>TH</sup> JULY 2024.**



**BYRAM ONGAYA,  
PRINCIPAL JUDGE**

