



**Nyangongo v Public Service Commission & another (Petition  
E005 of 2023) [2024] KEELRC 2428 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2428 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E005 OF 2023  
AN MWAURE, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**EVANS MORARA NYANGONGO ..... PETITIONER**

**AND**

**PUBLIC SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**TEACHERS SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The petitioner herein has filed a notice of motion application dated 14<sup>th</sup> March 2024 and seeks the following prayers:
  1. That this application be given on priority and heard at the first instance of or orders no. 2.
  2. Pending hearing and determination of petition E005 of 2023 review application the 1<sup>st</sup> respondent prohibited from shortlisting, selection and appointment of trainers from the advert dated 5<sup>th</sup> March, 2024.
  3. That after inter parte hearing of this application, the hon. Court prohibits the 1<sup>st</sup> respondent from shortlisting, selecting and appointment of trainers from the advert dated 5<sup>th</sup> March 2024.
  4. Costs of the suit be provided.
2. The PSC being the 1<sup>st</sup> respondent filed a preliminary objection dated 23<sup>rd</sup> May 2024 praying court to declare the said application is res judicata having been canvassed by justice Hellen Wasilwa and delivered judgment on 19<sup>th</sup> October 2023. The 1<sup>st</sup> respondent informed court that the preliminary objection was overtaken by events. Therefore the court lets the said preliminary objection dated 23<sup>rd</sup> May 2024 die a natural death.



3. The application vide notice of motion dated 14<sup>th</sup> March 2024 is what is pending in court but the petitioner did not show up in court to clarify what he was seeking. Miss Abalo appeared on behalf of the petitioner on 24<sup>th</sup> May 2024 and claimed she had an official communication for the petitioner. She declared they were considering abandoning the application but prayed for time to consult the petitioner.
4. The court graciously indulged the petitioner and was given until 3/7/2024 to consult with her client and report to court then. On the said day neither the petitioner nor the counsel made a show. It is not clear what the petitioner is intending with this application.
5. The court is also seized of the ruling delivered by Justice David Nderitu dated 7<sup>th</sup> March 2024 where petitioner sought for review of the judgment of Wasilwa Judge delivered on 19<sup>th</sup> October 2023. The gist of Justice Wasilwa's judgment was that she would not deal with the suit and would await the decision of the Court of Appeal. She struck out the petition.
6. The petitioner then filed an application dated 29<sup>th</sup> November 2023 seeking to review the judgment of Justice Wasilwa. The same was presented before Hon. Justice David Nderitu but he did not hear the matter but directed rightly so that it be returned to the court that delivered the judgment or file an appeal. This was per the directions given on 7<sup>th</sup> March 2024. The file was then sent to Nairobi and petitioner filed another application dated 14<sup>th</sup> March 2024 seeking the prayers cited herein before.
7. Indeed after going through the history of this case the court will not want to waste precious judicial time going through unmerited applications which have gone to two other judges and they were all dismissed or were unwilling to deal with the applications/petitions. Indeed Justice Wasilwa struck out the petition. The petitioner should rightly have gone to appeal the judgment of the honourable judge Wasilwa. To keep a case moving from one court of similar jurisdiction to another is a waste of courts time, it is unprofessional and an abuse of courts process.
8. The last time the petitioner's counsel was in court she had intimated that she was seeking instructions as to whether to abandon the application. She did not revert to court after that.
9. The court is disturbed by litigants who keep hoping into court rooms without due consideration for the due process of court. This is one case where the petitioner has clearly abused the court process. The honourable court finds the petitioner's application dated 14<sup>th</sup> March 2024 is unmerited and frivolous and so is dismissed with orders that the petitioner pay the costs of the application to the respondents.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the [Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the [Constitution](#) and the provisions of



Section 1B of the *Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

