



**Kamanja & 28 others v Board of Management Highway Secondary School
(Cause 192 of 2018) [2024] KEELRC 2693 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2693 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 192 OF 2018
B ONGAYA, J
OCTOBER 30, 2024**

BETWEEN

**DANIEL NDAIGA KAMANJA 1ST CLAIMANT
JACKSON KUTSWA SHIRAKU 2ND CLAIMANT
GEOFFREY KIRAGU KARIUKI & 26 OTHERS & 26 OTHERS & 26 OTHERS &
26 OTHERS & 26 OTHERS & 26 OTHERS 3RD CLAIMANT**

AND

**BOARD OF MANAGEMENT HIGHWAY SECONDARY
SCHOOL RESPONDENT**

RULING

1. The respondent/applicant herein filed the Notice of Motion dated 01.07.2024 through the learned Senior State Counsel Wycliffe Odukenya for the Hon. Attorney General. The application was under Order 50 Rule 1 of the [Civil Procedure Rules](#), Article 159 of the [Constitution](#), section 1A, 1B, 3 and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law. The application is seeking the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to issue an order staying execution of the judgment of Hon. Mr Justice Byram Ongaya delivered at Nairobi on 09.04.2020 and all orders flowing thereto pending the hearing and determination of this application inter-parties.
 3. That the proceedings and Judgment of Hon. Mr. Justice Byram Ongaya delivered at Nairobi on 09.04.2020 and all orders flowing therefrom be set aside.
 4. That the claimants' Statement of Claim dated 19.02.2019 and filed in court on 20.02.2019 be struck out.



5. That the costs of this application be provided for.
2. The Application is made on the grounds set out in the application and supported by the affidavit sworn by Irungu P. Nduati on 01.07.2024. It was urged as follows:
 - a. That the 19th claimant died or passed on 20.08.2016, which was over two (2) years and six (6) months before the claim was instituted. Consequently, there was no way the 19th claimant (deceased) purported to sign the Authority to Act giving the 1st claimant the authority to appear, sign any affidavit, plead or act for him. That the signature of the 19th claimant is a forgery and the deceased could not therefore legally institute these proceedings, sustain the same, obtain judgment, file a computation before this Court, obtain a decree and execute in order to receive payments.
 - b. That the 7th and 27th claimants were not parties to the claim. In the Authority to Act, the name of the 7th claimant has been crossed by pencil and in his place, the name of Purity Nyamu (14th claimant) has been inserted by pencil. Accordingly, the 7th and 27th claimants appear in all the computations filed by the claimants and adopted by this Honourable Court at number 4 and 27 yet they were not parties to the claim.
 - c. That the 8th claimant died or passed on 31.08.2022, which was over two (2) years and three (3) months after judgment was delivered. Since no substitution has ever been done to date, the 8th claimant (deceased) cannot legally receive money.
 - d. That the 21st claimant is a stranger as the school has never had an employee by that name.
 - e. That the 22nd, 23rd and 24th claimants were employed by the school after 01.07.2017 yet they are beneficiaries for the previous cycles when they were not employees.
 - f. That the 13th claimant was employed on or around April 2015 and resigned on 30.12.2015 yet he is a beneficiary for the cycles before he was employed and the cycles after his resignation.
 - g. That as per the Authority to Act, Weldon Rono, Charles Tonui, Eudita Wamboi, Victor Asava and Eda Kagendo were part of the 29 claimants who instituted the claim but mysteriously missing from the computation.
 - h. That further, proceedings were instituted for 29 claimants including deceased persons yet the computation adopted by this Honourable Court is for 30 claimants including two (2) deceased persons.
 - i. That because of the foregoing facts, the entire Proceedings, Judgment and Decree are rendered null and void. The claimant with the help of their advocates have committed fraud and forgery with the aim of defrauding taxpayers/ parents/ government of the scarce resources for their selfish and commercial gain.
 - j. That since the Statement of Claim was a non-starter and fatally defective, it follows that the Proceedings and Judgment delivered by Hon. Mr. Justice Byram Ongaya on 09.04.2020 should be set aside and the Statement of Claim dated 19.02.2019 struck out.
 - k. That this Honourable Court has inherent powers to ensure the observance of the due process of law, prevent improper vexation or oppression, do justice to parties. This Court also has jurisdiction to issue the reliefs sought.



3. The claimants filed the replying affidavit sworn by the 1st claimant on 22.07.2024 with the consent of the 2nd and 3rd claimants and 26 workers of the respondent through Were Lukoko & Co. Advocates. The 1st claimant prayed that the orders sought herein are disallowed and averred as follows:
 - a. That on 10.11.2020, the respondent filed an application seeking to set aside the Judgement delivered by Hon. Justice Byram Ongaya on 09.04.2020 and upon replying to the said application and canvassing the same by way of written submissions, this Court dismissed the said application on 25.05.2021.
 - b. That the Authority to Act was signed by the parties therein including Stanley Mutwiri in February 2018 before the case was filed and the copy of death certificate has erroneously indicated his death to have occurred on 20.08.2016 when his death actually occurred on 20.08.2018, as per the records held at Kenyatta National Hospital Mortuary.
 - c. That in addition, the respondent is misleading the Court, as at 03.02.2017 through June 2017, it was still remitting both union dues and NSSF dues for the said Stanley Mutwiri, who it alleges to have died in August 2016.
 - d. That only three (3) claimants in this suit act in their own capacity and on behalf of the respondent's workers and therefore the respondent creating several claimants is meant to mislead the Court. That none of the three claimants who instituted this suit were deceased before the commencement of the said proceedings.
 - e. That on or about 21.06.2021, the claimants' advocates filed a Computation of even date in compliance with the Judgement issued on 09.04.2020. The Computation was filled and a copy served upon the respondent and that thereafter, the matter was fixed for mention on 12.07.2021 to confirm computation. On 12.07.2021, the respondent sought an adjournment while stating that they are still compiling the arrears and the matter was adjourned to 27.09.2021 and 06.12.2021, but on which dates the respondent again sought an adjournment for the same reason. The matter was thereafter fixed for mention before the Honourable Judge on 26.01.2022, on which date the respondent was directed to file its computation and the matter was fixed for ruling on 26.05.2022.
 - f. That whereas the Court gave the respondent time to file computation, it neglected and/or refused to do that and sought to later file an application to set aside the computation, which application was dismissed.
 - g. That the application herein is res-judicata as the issues raised herein were deponed in the respondent's applications dated 18.05.2022, 31.10.2022 and 27.11.2023 and for which a determination was made therein. That litigation must come to an end and the continued filing of numerous applications by the respondent seeking the same relief is an abuse of the court process.
4. The claimants also filed Grounds of Opposition dated 22.07.2024 asserting its foregoing averments.
5. The respondent/applicant's further affidavit is sworn by Irungu P. Nduati on 06.08.2024. It was averred that the claimants have misconstrued the application herein, which is not seeking to review the Judgment or the Ruling adopting the computation, but setting aside the proceedings and judgment and striking out of the claim as pleaded in the application. He urged the Court to dismiss the claimants' grounds of opposition for being misplaced and not answering the critical issues raised in the application herein.



6. The respondent/applicant further averred that the claimants' replying affidavit of 22.07.2024 contains admissions of the fraud raised in the application herein at paragraph 1 of the said affidavit. That the 1st claimant admits that 29 parties moved the Court including a deceased, which denounces the computation that contains 30 people.
7. The respondent/applicant pleaded that Agnes Muthoni Thairu (26th claimant and number 5 in the Authority to Act) and Eudita Wambui (number 27 in the Authority to Act but missing in the computations adopted by court), have recorded statements asserting that they neither appeared before the law firm of Masika Koros to sign any alleged authority to act nor gave their personal details/ documents to the 1st claimant to institute proceedings on their behalf. That notably, Eudita Wambui states that the signature appearing in the authority to act is not hers but forged.
8. It was urged for the respondent/applicant that the claimants' information from the mortuary cannot invalidate a valid certificate of death that is an official government document. That nevertheless, a deceased cannot maintain the suit and file computations before this Court and that the 1st claimant is using the names of the deceased persons to enrich himself.
9. The 1st claimant filed a further replying affidavit sworn on 11.10.2024 averring that he sought to verify the date of death of Stanley Mutwiri from the deceased's wife who issued him with a copy of the death certificate she obtained, indicating the accurate date of death as 20.08.2018. The 1st claimant deponed that the death certificate submitted by the respondent/applicant is therefore a forgery and meant to mislead the Court.
10. Parties filed their respective submissions. The Court has considered the parties' respective cases and returns as follows:
 - a. The application is found to be an abuse of court process to the as urged and submitted for the claimants. The applicant has failed to invoke the rules of the Court and instead decided to invoke Order 50 of the Civil Procedure Rules in circumstances that the rules did not apply in the circumstances of the application. If the applicant invoked the rules of the Court it would be obvious that the application is in the nature of a review application with a consequential prayer that the judgment and the decree be set aside. The instant application is urged upon facts and allegations of evidence which with due diligence, ought to have been urged at the hearing of the main suit or in the subsequent applications as urged and submitted for the claimants but which was not done at all. It is therefore found for the claimants that the application is an abuse of court process because it is res judicata and is urged upon misleading rules of procedure without invoking the relevant review rules and under which the application as urged would not succeed.
 - b. In view of the foregoing, the Court considers that the Court lacks jurisdiction to delve into and to evaluate towards make findings, one way or the other, on the disputed matters of fact raised in the application. In any event, it could be that in the interest of justice and during satisfaction or execution of the decree, parties may enter such agreements as will meet ends of justice.

In conclusion the application filed herein dated 01.07.2024 is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 30TH OCTOBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

