



Odendo & another (Suing as the administrators of Estate of Patrick Odendo Oyundi) v Kenya Defence Forces & another (Petition 60 of 2017) [2023] KEELRC 209 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 209 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 60 OF 2017
J RIKA, J
JANUARY 31, 2023

BETWEEN

WILFREDA MARY ACHIENG' ODENDO 1ST PETITIONER
JAMES ONYANGO ODENDO 2ND PETITIONER
SUING AS THE ADMINISTRATORS OF ESTATE OF PATRICK ODENDO
OYUNDI

AND

KENYA DEFENCE FORCES 1ST RESPONDENT
ATTORNEY-GENERAL 2ND RESPONDENT

RULING

1. Judgment was delivered on 23rd July 2021, dismissing the Petition.
2. The 2nd Petitioner has filed an Application for Review of Judgment, dated 8th August 2021.
3. The 2nd Petitioner states that his documents and submissions were not considered, because they were not placed by the Court Registry in the physical file.
4. He points at paragraph 10 of the Judgment, which he alleges, states that the Court indicated that it did not have to rely on the Submissions filed by the Petitioners.
5. Paragraph 10 does not say that the Court did not have to rely on the Petitioners' Submissions.
6. It reads ...” It was directed in a virtual session that the Petition is considered by way of Written Submissions and Affidavits on record. It was directed that Written Submissions are filed within 21 days apiece, from 8th April 2021. At the time of preparation of this Judgment, there are no Submissions filed



in the physical file. The Court therefore relies on the Affidavits, Petition and Documents on record, in making this determination.”

7. The Court made reference to absence of Submissions from both Parties, and states that it would rely on the Affidavits, Petition and Documents in making its determination.
8. That is what the Court did, in making the Judgment on record.
9. Although the 2nd Petitioner lays blame on the Registry for not placing his Submissions on record, it is noted that he filed his Submissions outside the timelines given by the Court, on 8th April 2021. His Submissions were filed on 23rd June 2021, well over 2 months from 8th April 2021. The Respondents were compelled to file theirs within 2 days of service, as opposed to 21 days of service, allowed by the Court.
10. The Court had scheduled Judgment for delivery on 23rd July 2021, when it issued timelines on filing of Submissions, on 8th April 2021.
11. It had earlier, scheduled the Petition for hearing in open Court, on 17th December 2020, when the 2nd Petitioner explained that he was out of the Country and was unable to travel to Kenya, because he was not able to obtain Covid-19 clearance certificate, to enable him travel. It was against this background, that the Court adjusted the mode of hearing, to facilitate expeditious disposal of the Petition.
12. The Court is not persuaded that the Petitioners merit review of Judgment. The Affidavits, Pleadings and Documents placed before the Court were taken into consideration as can be read from the Judgment.
13. The Registry cannot be blamed for failing to transmit Submissions filed late, by the 2nd Petitioner. The file was already in the custody of the Judge, in preparation of the Judgment slated for 23rd of July 2021, when the 2nd Petitioner filed his Submissions. There are no grounds, to warrant the Court to review its Judgment.

It Is Ordered: -

- a. The Application dated 8th August 2021 by the Petitioners, seeking review of Judgment is disallowed.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY
OF JANUARY 2023**

JAMES RIKA

JUDGE

