



**Bridge International Academies Ltd v Odhiambo (Appeal E028 of 2021)
[2023] KEELRC 464 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 464 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E028 OF 2021
S RADIDO, J
FEBRUARY 22, 2023**

**BETWEEN
BRIDGE INTERNATIONAL ACADEMIES LTD APPELLANT
AND
MOSES OCHIENG ODHIAMBO RESPONDENT**

*(An appeal against the decision of the Senior Principal Magistrate Kisumu in MC
ELRC No. 331 of 2019 in the Ruling and Order of the Court dated May 18, 2021)*

JUDGMENT

1. In a judgment delivered on 13 April 2021, the Senior Principal Magistrate found that Bridge International Academies Ltd (the Appellant) had unfairly terminated the employment of Moses Ochieng Odhiambo (the Respondent).
2. The trial Court entered judgment for the Respondent as prayed in the Memorandum of Claim.
3. The Record of Appeal indicates that the Appellant did not call any witness or lead evidence during the hearing.
4. Dissatisfied with the judgement, the Appellant filed a Motion dated 18 May 2021, seeking review of the judgment.
5. The Senior Principal Magistrate considered the Motion and in a Ruling delivered on 29 July 2021, dismissed the review application.
6. The Appellant was aggrieved with the Ruling, and it lodged a Memorandum of Appeal with the Court on 11 August 2021.
7. On 18 January 2023, the Appellant filed an Amended Memorandum of Appeal and Record of Appeal.



8. In the Amended Memorandum of Appeal, the Appellant contended that:
- (1) In arriving at a cause for dismissal of the Appellant's application for review, the learned trial Magistrate erred in law by relying exclusively on the provisions of order 45 of the Civil Procedure Rules, 2010 as set out under the Civil Procedure Act, chapter 21 of the Laws of Kenya.
 - (2) In arriving at a cause for dismissal of the Appellant's application or review, the learned trial Magistrate erred in law by failing to consider the extensive provisions of rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 as set out under the Employment and Labour Relations Court Act No. 20 of 2011.
 - (3) The learned trial Magistrate erred in fact and law in failing to consider the Appellant's submissions dated June 16, 2021 in support of the Appellant's review application.
 - (4) The learned trial Magistrate erred in law and fact in making an unqualified finding to the effect that misdirections and errors are not grounds for review.
 - (5) The learned trial Magistrate erred in law and in fact in dismissing the Appellant's application and upholding the lower Court's decree and judgment dated April 13, 2021, without clarification when prayers b), c), d) and e) and the Respondent's claim had not been substantiated and/or were granted without merit.
 - (6) In the judgment of the lower Court dated April 13, 2021, the learned trial Magistrate erred in law by rendering a judgment that manifestly departs from precedent thereby departing from the doctrine of stare decisis.
9. The Court admitted the same on 23 January 2023. At the same session, the Court directed the parties to file and exchange submissions.
10. The Appellant filed its submissions on 3 February 2023, and the Respondent on 17 February 2023.
11. The Court has considered the Amended Memorandum of Appeal, the Record of Appeal and the submissions.
- Order 45 of the Civil Procedure Rules or Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016
12. In grounds 1 and 2 of the Amended Memorandum of Appeal, the Appellant impugned the trial Court's Ruling on the basis that the Senior Principal Magistrate had considered the provisions of Order 45 of the Civil Procedure Rules and ignored Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.
13. The Appellant urged the Court to consider the observation by the Court of Appeal in JMK v MWM & Ar (2015) that the review jurisdiction under the Employment and Labour Relations Court (Procedure) Rules, 2016 was wider than the jurisdiction under order 45 of the Civil Procedure Rules (the Court notes that the Court of Appeal was applying the Industrial Court (Procedure) Rules, 2011 and not the Employment and Labour Relations Court (Procedure) Rules, 2016).
14. The primary beacon guiding the exercise of the jurisdiction of this Court and the Magistrates Court when adjudicating over employment and labour disputes is the Employment and Labour Relations Court (Procedure) Rules, 2016.
15. The Courts should, therefore, not seek umbrage under the Civil Procedure Rules. Such recourse should only be considered where there is a vacuum in the Rules of this Court.



16. The Senior Principal Magistrate, consequently technically fell into an error of law by placing extensive reliance on the Civil Procedure Rules and not the Employment and Labour Relations Court (Procedure) Rules, 2016.
17. However, the question begs whether the reliance on the Civil Procedure Rules should be determinative of this appeal.
18. This Court does not think so, because the grounds of review set out in order 45 of the Civil Procedure Rules are in pari materia with those outlined in Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.
19. The legal principles which have been distilled over time in respect to Order 45 of the Civil Procedure Rules would be equally legally sound in respect to Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.
20. The Court in this respect concludes that the trial Court's final conclusions were legally sound.

Consideration of the Appellant's submissions misdirections

21. The Appellant also challenged the trial Court's Ruling on the ground that its submissions were not considered.
22. In the submissions, the Appellant contended that the trial Court fell into error by allowing or granting reliefs without due consideration of the merit of each head of the claim and relief.
23. Towards this end, the Appellant asserted that the trial Court should not have allowed the heads of claim for unpaid leave and house allowance.
24. According to the Appellant, these were misdirections which could be corrected under the review jurisdiction by the trial Court.
25. The Senior Principal Magistrate held that such misdirections and errors, if at all, would not constitute grounds for review and that the proper jurisdiction was an appellate jurisdiction.
26. In making the conclusion, the Senior Principal Magistrate found solace in two authorities which he quoted.
27. In *Abasi Belinda v Fredrick Kangwamu & Ar* (1963) E.A. 557 it was held:

a point which may be a good ground of appeal may not be a good ground for an application for review and an erroneous view of evidence or of law is not a good ground for review though it may be a good ground for appeal.
28. Similar views were made in the case of *Nyamogo & Nyamogo v Kogo* (2001) E.A. 174.
29. In the respectful view of this Court, the failure of the trial Court to consider the merit of each head of claim and relief sought by the Respondent was a misapprehension of not only the evidence but the law.
30. Such a misapprehension of the evidence or law should not be challenged as an error apparent on the face of the record, but belongs to the realm of appeal.

The merits of the judgment

31. In grounds 5 and 6, the Appellant attempted to challenge the judgment which was the subject of the review application.



32. There is nothing on record to suggest that the Appellant had lodged an appeal against the judgment and, therefore it is not open to this Court to embark on a legal journey of analysing the merits or otherwise of the judgment.

33. Before concluding, the Court must observe that the trial Court's conclusion of:

I enter judgment for the Claimant as against the Respondent in terms of the reliefs sought in the Memorandum of Claim does not meet the judicial standards of giving reasons for granting appropriate relief.

34. A Court should always endeavour to analyse and give reasons for each relief allowed.

Conclusion and Orders

35. It must be obvious by now that the Appeal is destined to fail as the Appellant did not show the trial Court exercised its review jurisdiction wrongly.

36. The Appeal is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF FEBRUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Wilbur Antony & Co. Advocates

For Respondent P.D. Onyango & Co. Advocates

Court Assistant Chrispo Aura

