



**Kunga v Catholic University of Eastern Africa (Cause 40 of 2020)
[2023] KEELRC 254 (KLR) (8 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 254 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 40 OF 2020
S RADIDO, J
FEBRUARY 8, 2023**

BETWEEN

ANDREW ONYANGO KUNGA CLAIMANT

AND

CATHOLIC UNIVERSITY OF EASTERN AFRICA RESPONDENT

RULING

1. For determination is a motion dated December 16, 2022 by the respondent seeking orders:
 - (a) ...
 - (b) ...
 - (c) That the judgment and or order of this court made on December 7, 2022 in this suit, be and is hereby set aside or reviewed and varied.
 - (d) That the costs of this application be provided for.
2. When the motion was placed before the court *ex-parte*, the court granted an interim stay of execution on condition that the respondent deposit the decretal sum in court (the condition was complied with on December 28, 2022).
3. The main ground in support of the application was that the judgment had errors apparent on the face of the record.
4. With respect to the particulars, the respondent deposed that court, despite finding that the claimant was employed on October 5, 2017 allowed claims said to have arisen before that date (prior to October 2017).
5. The respondent further asserted that the claimant had relied on and the court accepted unsigned claim forms, and that the court had failed to make a distinction between the signed and stamped claim forms



which had been submitted by the claimant and unsigned claim forms which had not been submitted for verification and payment.

6. The claimant filed a replying affidavit in opposition to the motion on January 23, 2023, wherein he deposed that his first contract with the respondent was in 2012, and that there was no error apparent on the face of the record.
7. The respondent filed a further affidavit and submissions on February 1, 2023. The claimant filed his submissions on February 8, 2023.
8. The court has considered the motion, affidavits and submissions.
9. The claimant had pitched for Kshs 341,000/- in respect of arrears from 2012 to 2016. The court did not allow the head of the claim. Instead, the amount was discounted from the total claim of Kshs 1,291,998/-.
10. At paragraphs 10 to 13 of the judgment sought to be reviewed, the court held that the claims arising from 2012 to 2016 were statute (time) barred.
11. The claimant also admitted that the respondent had paid Kshs 194,235/- on account of his son's school fees. The court discounted the same from the total claim leaving the sum of Kshs 756,763/-.
12. The bone of contention, is, therefore, the heads of claim for May to November 2017.
13. The respondent contended that these heads of claim were not supported by signed claim forms and predated the signed contract of employment.
14. The court addressed these heads of claim and the supporting claim forms from paragraphs 23 to 28 of the judgment and gave reason(s) for allowing the same.
15. In the court's view, having given reasons for allowing these particular heads of claim, it is not open to it to set aside or review the same under the review jurisdiction.
16. Where a court has misapprehended evidence or law, an aggrieved party's proper course of action is to prefer an appeal against the decision.
17. In this respect, this court will endorse the decision in *Abasi Belinda v Fredrick Kangwamu & Ar* [1963] EA 557, that:

..... 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 ground for review though it may be a good ground of appeal...

18. The motion dated December 16, 2022 is found without merit and is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF FEBRUARY 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Lugano & Lugano Advocates

For Respondent KW EW Advocates LLP

Court Assistant Chrispo Aura

