



**Ojuok v Kenya Power & Lighting Co. Ltd (Cause 63 of 2018)
[2023] KEELRC 614 (KLR) (15 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 614 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 63 OF 2018
S RADIDO, J
MARCH 15, 2023**

BETWEEN

JAMES AKONGO OJUOK CLAIMANT

AND

KENYA POWER & LIGHTING CO. LTD RESPONDENT

RULING

1. The court dismissed the cause on May 18, 2022 and on January 24, 2023, the claimant (applicant) moved the court seeking orders:
 - (1) ...
 - (2) ...
 - (3) That upon hearing and determination of this application inter-partes, the honourable court be pleased to stay/review and set aside its ruling dated May 18, 2022 delivered by Hon S. Radido J dismissing the applicant's memorandum of claim dated March 17, 2018 with costs and reinstate the said claim for hearing on the merits.
 - (4) That in the alternative the honourable court be pleased to set aside, vary, review the ruling delivered on May 18, 2022 upon inter-partes hearing and determination of this application.
 - (5) That the costs of this application be provided for.
2. The main grounds in support of the application were that the disciplinary committee which had recommended the dismissal of the applicant was conflicted and biased, the applicant had not been informed of the charges to confront and that the directive to uprate the transformers which laid the foundation to the disciplinary action had come directly from the capital works authority and, therefore, was lawful.



3. The court gave directions on the motion on January 24, 2023, and the applicant filed his submissions on February 3, 2023.
4. The respondent filed grounds of opposition and submissions on February 14, 2023.
5. In the grounds, the respondent contended that the application was an abuse of the court process as the applicant had not brought himself within the review jurisdiction, and that he should have lodged an appeal with the Court of Appeal.
6. The respondent also asserted that there had been inordinate delay in filing the application.
7. The court has considered the motion, affidavit, grounds of opposition and submissions.
8. The grounds upon which this court should review its judgment are set out in rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*.
9. This court gave in-depth reasons why it found no merit in the applicant's case. The applicant, in the instant application pleads with the court to have a relook at the reasons.
10. In this court's view, such an endeavour is not open to it as it would be sitting on appeal on the merits of its decision.
11. The recourse open to the applicant (was)/is to move the Court of Appeal.
12. The court further agrees with the respondent that there had been inordinate delay in filing the application as the applicant moved the court about 8 months after judgement.
13. The court finds the motion without merit, and it is dismissed with costs to the respondent.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED ON THIS 15TH DAY OF MARCH 2023.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Sala & Mudany Advocates

For Respondent Kipkenda & Co. Advocates

Court Assistant Chrispo Aura

