



**Kenya Private Universities Workers Union v KAG East University
(Cause 308 of 2020) [2023] KEELRC 1646 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1646 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 308 OF 2020**

**B ONGAYA, J
JULY 7, 2023**

**BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
KAG EAST UNIVERSITY RESPONDENT**

RULING

1. The court delivered its judgment in the case on December 10, 2021. The court found that besides the order that the redundancy was unlawful for want of notification to both the union and labour officer as required under section 40(1) (a) and for failure to set out the selection criteria for the employees declared redundant, all other prayers in the claim failed for want of proof and were dismissed. Each party was ordered to bear own costs of the suit.
2. The claimant filed an application by the notice of motion dated November 16, 2022 through Akolo Wanyanga & Company Advocates. On April 6, 2023 the union filed a notice to act in person. The application is under sections 16 and 20(1) of the [Constitution of Kenya](#) and all enabling provisions of law. The applicant prays that the court to review and set aside the judgment made herein on the December 10, 2021. The applicant also prayed that the pleadings be opened herein and the claimant be allowed to amend his claim as per the attached amended claim, and, costs be provided for.
3. The application was based on annexed supporting affidavit of Peter Emisembe Owiti, the applicant's Secretary General. The grounds are stated and urged as follows:
 - a. At the time of filing the claim the claimant did not have the payment details and calculations of the grievants. The payment calculations have now been received and the court should review judgment, set it aside, and allow the amendment.
 - b. The application be granted per rules of natural justice.



- c. The grievants will be prejudiced if the application is not allowed.
 - d. The claim was not subjected to full trial hence the dismissal was unfair. The grievants deserve their day in court.
 - e. There is an error apparent on record because at the time of the judgment there was an application dated July 14, 2020 that was coming up for ruling and it is not clear why the whole claim was dismissed without giving a chance to the grievants to give their evidence. The judgment dismissed the suit prematurely instead of ruling on the application. The application was for orders to restrain termination, retirement or redundancy.
4. The respondent filed the affidavit of Dinah Mwinzi, the respondent's Vice Chancellor, sworn on March 29, 2023 and drawn by Nchoe Jaoko & Company Advocates. It was urged and stated for the respondent as follows:
- a. The application is vexatious and an abuse of court process as it lacks merit.
 - b. Section 80 and order 45 of the *Civil Procedure Act* and *Rules*, respectively, provide for review of judgment. The grounds for review are an error apparent on record, new evidence which with due diligence could not be available as at hearing, or that other sufficient reason.
 - c. In the instant application there is no established new evidence or error apparent on record. The grievants' payment details would be in the applicant's custody with due diligence and as at prior to hearing and determination of the suit. The applicant failed to list the grievants plus their particularised claims as found by the court.
 - d. If the dissatisfaction by the applicant is about the court's misapprehension of the law or incorrect procedure or wrong exercise of discretion by the court, the applicant should appeal and not apply for review.
 - e. The applicant had filed a similar application dated May 12, 2022 and which was voluntarily withdrawn.
 - f. All employees affected by the process of redundancy, termination and early retirement voluntarily signed the exit documents and which are exhibited. They were duly paid and the review will not serve any just purpose.
 - g. The court decided the suit and is functus officio after judgment was delivered. The suit should not be reopened at all.
 - h. There was no misapprehension in procedure or substance when the court delivered judgment in the suit.
5. Parties filed respective submissions. The court has considered the respective positions on the application for review. The court returns as follows.
6. First, the record shows that on February 24, 2021 the interim orders given on the application dated July 14, 2020 were confirmed pending hearing of the main claim. Mr Owiti was present in court on that date and the court returns that the applicant is misconceived in urging that as at the time of the judgment, that application was pending.
7. Second, the record further shows that on the same February 24, 2021 the court ordered that the claim to proceed as undefended and the claimant was to file the submissions and to serve within the directed timelines. The court returns that the claimant is once again misconceived in urging that the judgment



was premature. By that finding, the court returns that the alleged procedural error on record in that regard was misconceived and fictitious.

8. Third, the court finds that as urged and submitted for the respondent, the applicant has failed to show that the grievants' records and computations amounted to fresh evidence which with due diligence could not be placed before the court as at the time of pleading and hearing of the suit. In any event, the applicant does not dispute the respondent's evidence that the grievants have since been paid the terminal dues subject of the alleged new evidence and computation. Further, the court returns that as at filing the suit the applicant knew the grievants and nothing stopped the union from particularizing the grievants in the statement of claim and the claimant's documents.
9. The court therefore returns that the applicant has failed to meet the threshold for grant of a review in the instant case. The applicant does not deny to have withdrawn a previous substantially similar application. The application is liable to dismissal with costs.
10. In conclusion the application by the notice of motion dated November 16, 2022 and filed for the claimant is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7TH JULY, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

