



Ogola v Maasai Mara University (Employment and Labour Relations Cause 59 of 2019) [2023] KEELRC 1703 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1703 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 59 OF 2019**

HS WASILWA, J

JULY 6, 2023

BETWEEN

PROF FREDRICK ODHIAMBO OGOLA CLAIMANT

AND

MAASAI MARA UNIVERSITY RESPONDENT

RULING

1. Before me for determination is the claimant/ Applicant's notice of motion dated March 29, 2023, filed under certificate of urgency pursuant to Rule 33(1)(c) of the *Employment and Labour Relations Court Rules*, 2016 as read with Order 45 of the *Civil Procedure Rules*, seeking for the following Orders; -
 - a. That this Honourable Court be pleased to review the judgement of Honourable Lady Justice Hellen Wasilwa dated March 16, 2023.
 - b. That the costs of this Application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the claimant deposed upon on the March 29, 2023.
3. The applicant stated that when filling this suit on September 5, 2019, he sought for several orders including 186 leave days, medical refund claim and 2nd trench of the 2017 CBA arrears but upon delivery of judgement, this Court did not pronounce itself on the three items when the same were part of the reliefs sought in the Amended memorandum of claim dated October 31, 2019 and filed in Court on March 10, 2021.
4. He stated that having worked for the university from October 7, 2011 till June 16, 2017, the CBA was discussed and concluded while he was working for the Respondent, therefore is deserving of the arrears as sought.



5. On the leave days, the applicant stated that the leave claim was discussed and approved as per leave form dated May 9, 2017 as such it's his rightful entitlement.
6. He contends that the Respondent will not be prejudiced if the said errors are corrected by this Court.
7. The Application is opposed by the Respondent who filed a replying affidavit deposed upon by David M Tiampati, the Respondent's Deputy Registrar Human Resource Department, on the May 10, 2023.
8. The affiant contends that this Review application is seeking to obtain more orders than what was issued by this Court without any basis being laid for the said review. He added that the conditions of review under Order 45 Rule 1 of the Civil Procedure (Amendment) Rules, 2020 have not been met to warrant the granting of the orders sought.
9. The affiant maintained that the applicant has not demonstrated that it discovered new evidence which was not within his knowledge at the time of hearing, neither has he demonstrated any error apparent on the face of record.
10. He insisted that all the issues that the Court needed to address were addressed and the judgement captured all the issues raised.
11. It is his case that just because the applicant's case was not controverted does not mean that the Court should allow it without interrogating the evidence in support of the case. He maintained that the review application is not merited and urged this Court to dismiss it with costs.
12. The application was canvassed by written submissions with the claimant filing on the June 6, 2023 and the Respondent on June 8, 2023.

Applicant's Submissions.

13. The Applicant submitted on one issues; whether the Review Application is merited. It was argued that the basis of the application is on the error or mistake apparent on the face of record being that the court failed to pronounce itself on some of the prayer sought by the claimant without giving any reasons. He added that this Court is empowered under the law to corrects such errors as was held in *Paul Mwaniki V National Hospital Insurance Fund Board of management [2020] eKLR* where the Court held that:-

' A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.'
14. The Applicant submitted that the expression 'any other sufficient reason' as stated in Order 45 Rule 1 of the Civil Procedure Rules means reasons sufficiently analogous to those specified in the rule, any other attempt, except an attempt to correct an apparent error or an attempt not based on any grounds set out in the rules, would amount to abuse of the liberty given to the tribunal under the Act to review judgement. This is as per Sir Dinshah Fardunji Mullah, in his Book '*The code of Civil Procedure*' 18th Edition of 2012. Similarly, that the application herein has expressly stated the error made by the Court in failing to pronounce itself in the three reliefs sought in the Amended claim. Therefore that the error being corrected can be seen at the glance on the pleadings which does not need any reasoning of the Court .
15. The Applicant maintained that the items sought in the claim were proved to the required standard and not challenged by the Respondent. Infact, that the Court awarded the Memorandum of claim as prayed but failed to include all prayers sought in its final Orders in the judgement which this Review comes in to cure.



16. The Applicant submitted further that section 34 of the Employment and Labour Relations Court Procedure Rules empowers this Court to review its orders suo moto or on application of the parties as is the case herein.
17. In conclusion, the Applicant submitted that it has filed this application in a timeous manner and urge this Court to allow it as prayed.

Respondent's Submissions.

18. The Respondent submitted on two issues; whether the review orders ought to be granted and whether the Court is functus officio.
19. The Respondent submitted that for application for review to be allowed, the Applicant must satisfy the conditions for review under Order 45 Rule 1 of the Civil Procedure Rules as read with Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. He argued that the Applicant has not demonstrated any of the reasons under the Rules to warrant the review Orders.
20. The Respondent argued that review orders can be granted whenever the Court consider its necessary to correct any errors on the face of its orders as was held in *George Nyakundi Ombaba V Attorney General [2021] eKLR* where the Court relied on the case of *National Bank of Kenya v Ndungu Njau [1997] eKLR* where the court expressed itself as follows concerning an error or omission apparent on the face of record:

' A review may be granted whenever the court considers that it is necessary to correct an error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of the law. Misconstruing a statute or other provision of the law cannot be a ground for review.'

21. Accordingly, that the applicant herein is seeking review of this Court's orders merely because his expectation on the awards granted was not met. Which is not a ground relevant in granting review orders. Therefore, that there are no compelling reasons that can convince this Court to review its judgement.
22. On whether the Court is functus office, it was submitted that this Court is functus officio and its powers is limited at this stage in that its barred from re-evaluate its reason of judgement. In this they relied on the case of *Menginya Salim Murgani V Kenya Revenue Authority[2014] eKLR* where the Court held that ;

' It is a general principle of law that a Court after passing Judgment, becomes functus officio and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law.'

23. The Respondent also submitted that this Court conclusively and finally determined the issues raised in the Amended claim by its judgement of March 16, 2023 cannot now re-open the case and make further orders. In this they relied on the case of *Raila Odinga & 2 others V Independent Electoral and Boundaries Commission [2013] eKLR* where the Court discussed the concept of 'functus officio,'



as stated by Daniel Malan Pretorius, in 'The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,' (2005) 122 SALJ 832, that:-

' The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter. The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.'

24. In conclusion, the Respondent submitted that the orders sought by the Applicant is unmerited and urged this Court to dismiss the Application in entirety.
 25. This is an application for review and the applicants content that they seek orders of review of this court's Judgment of March 16, 2023 which did not consider prayers sought in the claim. The claimant seek inclusion of an award of annual leave (186 days), CBA arrears and medical claims.
 26. It is true that in the claim filed by the claimant herein, he sought to be paid annual leave days of 186 days and arrears of salary as per CBA.
 27. In his evidence, the claimant adopted his statement date of September 5, 2019 as his evidence in chief and documents filed herein. He indicated he resigned from employment while being owed 186 leave days and some wages.
 28. I note from a document dated May 9, 2017, it was verified by one Nampushi Ag Reg. Administration on May 18, 2017 that indeed he was owed 186 leave days which this court failed to award as prayed.
 29. The claim of what is owed as arrears of salary was however not computed and therefore I am unable to review the same even vide this ruling.
 30. I however find that the claimant was entitled to pending leave days equivalent to 186 days of Kshs 1,931,641/= as prayed.
 31. I allow application for review and review my judgment of March 16, 2023 and add at paragraph 21 an addition of 1,931,641/= being leave days making total awarded to be Kshs 1,881,750/= plus Kshs 1,931,641/=
- Total = Kshs 3,813,391/=.
- Less statutory deductions
32. Rest of the judgment remains undisturbed.

RULING DELIVERED VIRTUALLY THIS 6TH DAY OF JULY, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Awuor for Claimant – present

Maina Ngaruiya for Respondent – absent

Court Assistant - Fred

