



Muriu v G4S Security Services Kenya Limited (Miscellaneous Application 16 of 2020) [2023] KEELRC 2126 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2126 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
MISCELLANEOUS APPLICATION 16 OF 2020
ON MAKAU, J
SEPTEMBER 20, 2023**

BETWEEN

ZACHARY MWANGI MURIU APPLICANT

AND

G4S SECURITY SERVICES KENYA LIMITED RESPONDENT

RULING

1. The ruling relates to the applicants notice of motion dated June 9, 2023 seeking the following orders:-
 - a. That this honourable court be pleased to review its orders of a ruling delivered by this court on 1/10/2020.
 - b. That this honorable court be pleased to reinstate the application dated 23/06/2020 for hearing by way of oral evidence.
 - c. That the costs of the application be provided for.
2. The motion is supported by the applicant's own affidavits sworn on June 7, 2023 and June 11, 2023. In brief the applicant's case is that the hearing and dismissal of his application dated June 23, 2020 was done in his absence. He contended that he was informed via letter that the motion was to be heard on 1st October, 2020 orally in the open court and he attended. However the motion proceeded online and while he was in the open court, and it was dismissed for non-attendance. He urged the court to allow the instant application for review otherwise he will suffer irreparable harm.
3. The respondent has opposed the motion by filing grounds of opposition dated July 5, 2023. In brief the respondent's case is that the motion is res judicata and vexatious since the applicant filed a similar motion dated October 16, 2020 but the court dismissed it vide the ruling rendered on February 25, 2021.



4. I have considered the motion, supporting affidavits, the grounds of oppositions and the oral submissions made in court on July 13, 2023. The issues for determination are:-
 - a. Whether the motion is res-judicata.
 - b. Whether the motion meets the threshold for review of the impugned orders.

Res-judicata

5. Section 7 of the *Civil Procedure Act* provides that:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them can claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

6. I have carefully gone through the court record and confirmed that by notice of motion dated October 16, 2020 the applicant sought review of the court’s ruling rendered on October 1, 2020. The said motion was considered on merit by the court and it was dismissed vide the ruling delivered on February 25, 2021. The applicant filed another motion challenging the ruling of February 25, 2021 but it was withdrawn.
7. The applicant has now brought the instant motion seeking review of the same decision while fully aware that, the court (Marete.J) dismissed a similar application on February 25, 2021. Having considered the material before the court, I am satisfied that the notice of motion dated June 9, 2023 is res-judicata and I have no jurisdiction to determine the issue of review for a second time.
8. In view of the foregoing I dismiss the notice of motion dated June 9, 2023. Since the respondent attended the hearing online, I will not award costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF SEPTEMBER, 2023.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

