



**Omido v Secretary, Board of Management, Namundera Mixed Secondary School
(Petition 31 of 2017) [2023] KEELRC 3036 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3036 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 31 OF 2017
S RADIDO, J
NOVEMBER 29, 2023**

BETWEEN

NAPHTALY OMIDO PETITIONER

AND

**SECRETARY, BOARD OF MANAGEMENT, NAMUNDERA MIXED
SECONDARY SCHOOL RESPONDENT**

RULING

1. On 15 March 2018, the Court upheld a Preliminary Objection raised by the Respondents and dismissed the Petition.
2. Despite the dismissal, the Petitioner has undeterred continued to file application after application, the latest being a Motion dated 5 May 2023 seeking orders:
 - (1) ...
 - (2)
 - (a) That this Honourable Court be pleased to review its own order and decree it made on 1st February 2023 relating to the matter.
 - (b) That it reinstates the Notice of Motion together with all prayers That it dismissed herein on 1st February 2023.
 - (3) That costs be in the cause.
3. The main grounds raised by the Petitioner in support of the application are that the Court on 1 February 2023 dismissed an earlier application on technicalities; a further affidavit had been filed annexing an order from the High Court Kakamega and that the instant application was in furtherance of the execution of an order made by the High Court in Kakamega on 25 September 2009.



4. The Respondents filed Grounds of Opposition on 27 June 2023, contending that the application was incurably defective, fatally incompetent and was filed after inordinate delay.
5. The Court took brief oral submissions on 28 September 2023.
6. The review jurisdiction of this Court is guided by Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.
7. The Petitioner has not drawn the attention of the Court to any newly discovered matter of evidence which merits the Court to exercise its review jurisdiction. Neither has he pointed out any error on the face of the record nor demonstrated sufficient reason.
8. The Petitioner filed the application 3 months after the Ruling sought to be reviewed. He was always aware of the Ruling but he has not explained why it took him 3 months to move for review.
9. The question of delay should be determined on a case-by-case basis. Without any explanation why it took three months to move the Court despite the Respondents raising the issue, the Court finds inordinate delay.
10. The Court has also looked at the record.
11. As the Court stated in paragraph 8 of Ruling No. 5, there is currently no live or substantive dispute pending before it to warrant a review of the Ruling.
12. It would serve no legal purpose to order the Respondents to supply the Petitioner with minutes of a meeting which led to action being taken against the Petitioner when the legal action advanced by the Petitioner is no longer before this Court for determination.
13. In the Ruling delivered on 4 October 2018, the Court warned the Petitioner of the dangers of vexatious litigation.
14. This Court also notes that the High Court had in a Ruling delivered on 19 November 2021, ordered the Petitioner not to file any further applications without leave of the Court.
15. The constant applications and endless litigation by the Petitioner on issues which the Courts have previously determined border on an abuse of the court process and the Petitioner should be alert that at some point he may be declared a vexatious litigant.

Conclusion and Orders

16. The Motion dated 5 May 2023 lacks merit and is dismissed with further costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 29TH DAY OF NOVEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

Applicant in person

For Respondent Cavin Anyuor, Advocate, Teachers Service Commission

