



**Kariuki v Trustees of Premier Academy Charitable Trust t/a Premier Academy
(Cause 1420 of 2016) [2023] KEELRC 2997 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2997 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1420 OF 2016
L NDOLO, J
NOVEMBER 23, 2023**

BETWEEN

JOYCE GATHONI KARIUKI CLAIMANT

AND

**THE TRUSTEES OF PREMIER ACADEMY CHARITABLE TRUST T/A
PREMIER ACADEMY RESPONDENT**

RULING

1. This matter proceeded for hearing before Makau J, who took the Claimant’s case on June 17, 2021 and June 21, 2021.
2. I became seized of the matter at the defence stage and on September 29, 2021, I fixed it for hearing of the respondent’s case on October 21, 2021 but the matter did not proceed.
3. At a subsequent hearing on March 1, 2023, the Court was notified that Counsel then on record for the Respondent had been appointed as a Judge and the matter could not therefore proceed on that date. I gave a further hearing date of July 19, 2023, on which date the Court was not sitting.
4. On September 18, 2023, Counsel appearing for the respondent, Mr Koech holding brief for Mr Olao informed the Court that the respondent had filed an application dated September 5, 2023, asking that the claimant be recalled to the witness stand.
5. The application is supported by an affidavit sworn by the respondent’s Human Resource Manager, Tabitha Kimani and is based on the following grounds:
 - a. The respondent’s case has not been heard and there has been substantial change in the representation of the respondent as its former Advocate is no longer on record since November 2022;



- b. In light of the change in both the trial court and the respondent's Counsel, it is a fair presumption that material facts that may have been set out previously may be lost in the changes and the Respondent pleads that the hearing of the matter commences afresh;
 - c. No prejudice will be suffered by the claimant if she is recalled to testify and to be cross examined;
 - d. If the orders sought are not granted, the respondent stands to be highly prejudiced and the Court will be denied the opportunity to properly interrogate the issues in the matter;
 - e. This is a proper case for the Court to exercise its discretion in favour of the Respondent;
 - f. It is in the interest of justice that the application is allowed.
6. The claimant filed Grounds of Opposition dated September 17, 2023, stating:
- a. That the application is meant to delay and frustrate the expeditious determination of the matter;
 - b. That the application is mischievous, malicious and meant to frustrate the claimant's claim;
 - c. That the claim is seven (7) years old and its continued retention in court offends the tenets of article 50 of the [Constitution of Kenya, 2010](#).
7. The claimant further opposes the application by her Replying Affidavit sworn on September 19, 2023.
8. The claimant gives a chronological account of the long litigation history of this matter. She states that starting the matter *de novo* would occasion further delay, to her detriment.
9. In urging its application, the respondent relies on section 146(4) of the [Evidence Act](#) and order 18 rule 10 of the [Civil Procedure Rules](#), which provide for recalling of witnesses.
10. The reason given by the respondent for its plea for re-opening of the case is that there is a new trial Judge and new counsel on record for the respondent. On her part, the claimant states that reopening of the case would cause further delay in an old matter.
11. This being a 2016 matter, I agree with the claimant that it has taken too long to be concluded. This is a court of record and the transfer of a trial Judge or change of Counsel, without more, cannot be a justification to begin a hearing *de novo*. The record taken by Makau J is intact and I see no reason to begin the trial afresh.
12. The respondent's application dated September 5, 2023 is therefore declined with costs in the cause.
13. I direct that the proceedings recorded by Makau J be typed and availed to the parties within the next fourteen (14) days from the date of this ruling.
14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF NOVEMBER 2023.

LINNET NDOLO

JUDGE

