



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 965 OF 2010**

**BETWEEN**

**DAVID NAMU KARIUKI.....CLAIMANT**

**VERSUS**

**INSTITUTE OF POLICY ANALYSIS AND RESEARCH.....RESPONDENT**

**RULING**

1. The Claimant seeks review of orders issued on 25<sup>th</sup> February 2021, declining to have Prof. Shem- Migot Adholla summoned to Court, to be orally cross-examined, as to the business affairs of the Respondent, and/or properties of the Respondent, and/ or the Respondent's means of satisfying the decretal amount.
2. The Application for review is dated 30<sup>th</sup> April 2021, based on the Affidavit of the Claimant of the same date.
3. The Claimant states that on 27<sup>th</sup> April 2021, he received documents from the Company Registry, showing that Prof. Shem Migot-Adholla is still a Director of the Respondent.
4. The Court exercises review jurisdiction under Rule 33 of the E&LRC [Procedure] Rules, 2016. The Orders of 25<sup>th</sup> February 2021 can be reviewed, *"if there is discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of that person, or could not be produced by that person, at the time when the decree was passed or order made."*
5. The Claimant has not persuaded the Court, that at the time the Orders issued, after exercise of due diligence, was not in a position to produce the records from the Company Registry, which he now wishes to rely on.
6. Secondly, the documents from the Company Registry have 8 Directors of the Respondent. Among them is a Director named as Shem Migoti. Prof. Shem Migot- Adholla submits, he is not among the listed Directors.
7. The Court does not think that even if Shem Migoti and Prof. Shem Migot-Adholla are one and the same person, that this would be sufficient to warrant review and summoning of the said Prof Shem Migot-Adholla.
8. The orders of 25<sup>th</sup> February 2021, issued for more reasons than the non- production of documents, from the Company Registry.
9. The Affidavit supporting the Application leading to the Orders of 25<sup>th</sup> February 2021, was sworn on an unstated date; the Memorandum and Articles of Association exhibited by Prof. Shem Migot-Adholla indicated Directors were Prof. Njuguna Ng'ethe and David Wainaina Gachuhi as of 1992; and the Court held that summons must be preceded by sufficient evidence to justify their issuance.
10. The document from the Company Registry names 8 Directors. The Claimant has still not explained why he insists on Prof. Shem Migot-Adholla, who has not conclusively been shown to be one of the Directors, being summoned to explain the business affairs of the Respondent. There are 8 Directors. What marks out one Director from the others, so that he should bear the corporate responsibility of the Respondent?
11. It is still not clear why the Claimant pursues the committal to civil jail of Prof. Shem Migot- Adholla.

**IT IS ORDERED:** -

*a. The Application for review is declined.*

*b. No order on the costs.*

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF JANUARY 2022.**

**JAMES RIKA**

**JUDGE**