



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

CAUSE NO. 122 OF 2018

ISMAEL KORIR.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....1ST DEFENDANT

TEACHERS SERVICE COMMISSION

ELGEYO MARAKWET COUNTY DIRECTOR.....2ND DEFENDANT

RULING

1. By a motion dated 30th April, 2021 the applicant sought orders in the main that this court reviews its judgment delivered on 12th January, 2021 specifically at paragraph, 42 on the issue of costs only.

2. The application was supported by the affidavit of counsel for the claimant/applicant Mr. Samuel Oyugi Ondieki who deponed among others that:

- a) That, judgment was delivered on the 12th of January, 2021 (Annexed herewith and marked "SOO.1" is a copy of judgment of this Honourable Court)
- b) That, the Honourable Court inter alia made a determination that the claimant herein was unfairly demoted. That is basically the reason why the claimant sought intervention of court.
- c) That, the said judgment further pursuant to orders at paragraph (42) indicated that no orders as to costs.
- d) That, the claimant prays for review of the judgment specifically on the issue of costs only.
- e) That, the applicant incurred expenses in prosecuting the claim herein as demonstrated herein below:-
 - i) That this suit was filed in Eldoret ELRC on 19th February, 2018 and given case number 122 of 2018.
 - ii) That this suit was instituted by the firm of Lelei & Langat Advocates on behalf of the claimant.
 - iii) That, the firm of Stella Rutto, Advocate entered appearance on the 14th May, 2018 on behalf of the respondents denying the contents in the statement of claim.
 - iv) That the claimant the after appointed the firm of Ngeno, Ondieki & Co. Advocates on the 3rd of December, 2018 expending more costs in the process.
 - v) That since filing the suit until when it was determined the claimant attended court more than 16 items and filed more than 300 folios of papers hence incurring huge costs in the process.
- f) That, the Honourable Court has jurisdiction pursuant to Section 12 (4) of the Employment and Labour Relations Court Act, 2014 and Rule 29 (1), (2), 33 and 34 of the Employment and Labour Relations Court (Procedure) Rules 2016 to review its judgment of 12th January, 2021.

3. The application was opposed by the respondent who filed grounds of opposition in which it contended that:

- a) The application is misconceived, mischievous, frivolous and an abuse of the process of this Honourable Court.
- b) This Honourable Court lacks jurisdiction to hear and determine the instant Application on grounds that it is functus officio having delivered its judgment on 12th January, 2021.
- c) That application seeks to reopen the issue of costs for fresh litigation whereas the same was fully ventilated before this Court and a determination made in the same vide the Court's judgment thus marking finality of the matter.
- d) The prayers sought in the application do not meet the threshold for Review and can only be proffered for Appeal.
- e) The 1st Respondent has already complied with the judgment of this Honourable Court hence nothing is left for further determination before this Honourable Court.

4. Rule 33(1)(a) of the Court Rules provides as follows:

- a) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
 - i) 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 the order made;
 - ii) on account of some mistake or error apparent on the face of the record;
 - iii) if the judgment or ruling requires clarification; or
 - iv) for any other sufficient reason.

5. Under clause 1(a)(iv), the Court can review its judgment for any sufficient reason. Further under Section 12(4) of the Employment and Labour Relations Court Act, the Court may subject to the rules make such orders as to costs as the Court considers just.

6. The court while rendering its judgment on 12th January, 2021 operated under the mistaken notion that because no monetary order was made and the respondent ordered to reinstate and or promote the claimant to his administrative position which he held while at Cheboi Secondary School, the claimant was partially successful hence it would only be just to order that each party bears their own costs.

7. The Court was told that the claimant herein was transferred from Cheboi for security reasons after students raided his house and threw away his things on the road. The claimant was not transferred on account of discipline. However, upon transfer, the claimant was relieved of his administrative position which he held while at Cheboi. This triggered the present litigation and consequently the judgment of the Court delivered on 12th January, 2022.

8. The Court has carefully reconsidered the evidence and the consequential judgment and is persuaded that this is a proper case for the court to reconsider its order on costs and review the same under Section 12(4) of the Employment and Labour Relation Act as read together with rule 33(1)(a)(iv) of the Court Rules.

9. This application is therefore allowed as prayed but with no order as to costs.

10. It is so ordered.

Dated and delivered at Eldoret this 25th day of February, 2022

Abuodha Nelson Jorum

Judge ELRC