



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 4 OF 2019

**IN THE MATTER OF: ARTICLES 21, 22, 23(3), 27, 28, 35, 41, 47, 48 AND
50(2) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND
FREEDOMS UNDER ARTICLES 10, 21, 22, 23(3), 27, 28, 35, 41, 47, 48
AND 50(2) OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF: THE EMPLOYMENT ACT

BETWEEN

MAJOR (RTD) JOSEPH K CHEPKWONY.....PETITIONER

v

KENYA DEFENCE FORCES.....1st RESPONDENT

HON ATTORNEY GENERAL.....2nd RESPONDENT

RULING

1. Through a Motion dated 5 March 2021, Major (Rtd) Joseph K Chepkwony (the applicant) seeks orders:

(1) ...

(2) ...

(3) THAT this Honourable Court be pleased to review and or set aside the Ruling dated 2nd February 2021 and all consequential orders thereto.

(4) THAT the written submissions dated 17th December 2020 be deemed as filed upon payment of the requisite fee.

2. The Court directed the Respondents to file and serve a response to the Motion. The parties were also directed to file and exchange submissions.

3. The applicant filed his submissions on 20 January 2022 (the Respondents responses and submissions were not on file by time of

preparation of this Ruling).

4. The reasons advanced in support of the review application was that the applicant had sent his submissions through email to the Court on 17 December 2021 but the registry had failed to place the submissions in the file for consideration by the Court while preparing its Ruling.
5. According to the applicant, the failure to consider the submissions was an error apparent on the face of the record as it led the Court to make adverse orders against him.
6. The Court has considered the Motion and the supporting affidavit and come to the view that the application is without merit.
7. First, the Court did not deliver any Ruling on 22 February 2021.
8. The only determination by the Court which is on record is a Judgment delivered on 10 February 2021.
9. The Court will assume that the applicant made an error as to the date of the delivery and was seeking a review of the judgment.
10. Second, the applicant has not demonstrated that he paid for the submissions. The submissions could only be deemed as properly on record after payment of the requisite filing fees (the applicant appears to admit he did not make the payment in proposed order 4 of the Motion).
11. Third, the Court had directed the applicant to file and serve his submissions on or before 4 December 2021, and he has not offered any explanation why he did not file the submissions within the agreed and set timelines.
12. Last, the applicant has not demonstrated that the Court did not consider and render itself on any of the Issues he identified in the submissions.
13. The Motion dated 5 March 2021 is dismissed with no order on costs as the Respondents did not file any response.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF FEBRUARY 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Petitioner P. Sang & Co. Advocates

For Respondent Office of the Hon. Attorney General

Court Assistant Chrispo Aura