



**Khaemba v Board of Management Chebukwa Secondary School (Cause
14 of 2017) [2022] KEELRC 1459 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1459 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE 14 OF 2017**

**JW KELI, J
MAY 26, 2022**

BETWEEN

KENNEDY WAKOTO KHAEMBA CLAIMANT

AND

**BOARD OF MANAGEMENT CHEBUKWA SECONDARY
SCHOOL RESPONDENT**

RULING

1. The Claimant upon the delivery of Judgment dated 20th December 2021 in the claim, filed a Memorandum of review dated 17th January 2022 of the judgment under Section 16 of the [Employment and Labour Relations Court Act](#) and Rule 33 of the [Employment & Labour Relations Rules 2016](#) seeking the following orders:-
 - a. That the Application for review of the Judgment delivered signed and dated 20th December 2021 be allowed.
 - b. The judgement delivered, signed and dated 20th December 2021 be and as such corrected, inclusively to accommodate the facts in the Claimant's written submissions dated 19th October 2021 and sections of the practical laws adduced herein.
 - c. The Judgment of this suit delivered, signed and dated 20th December 2021 and the subsequent costs of the review of the Applicant party be provided for.
 - d. The Applicant party be awarded the costs of this review of Judgment plus interest at court rates.
2. The grounds for the review application are stated in part D of the memorandum being Nos 1-18. The court finds that all the grounds allude to error in law and fact by the court in reaching the conclusions in the judgment.



3. The Application is opposed. The Respondent filed grounds of opposition dated 25th January 2022. The main position of the Respondent being the Application is incompetent and abuse of the court process for not fitting within the provision of section 80 of the Civil procedure Act and order 45 of the Civil Procedure Rules.
4. The Court directed the Application be canvassed by way of written submissions. The Applicant's written submissions drawn by the Applicant in person are dated 4th April,2022 and received in court on the 6th April 2022. The Respondent's written submissions drawn by Gilbert Tarus, Senior State Counsel for Hon. Attorney General are dated 5th April 2022 and filed in court on the 22nd April 2022.

Determination

The relevant law on review

5. Section 16 of the Employment and Labour Relations Court Act No. 20 of 2011 provides for review of the orders of the court as follows:- “ the court shall have power to review its judgment, awards, orders or decrees in accordance with the Rules.”
6. The 2016 Rules of the court then provides under Rule 33 for review procedure as follows:- “
 - i. 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 appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling.
 - a. If there is discovery or 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.
 - b. On account of some mistake or error apparent on the face of the record.
 - c. If the Judgment or ruling requires clarification or
 - d. For any other sufficient reason.”
7. The Respondent relies on the Provision of Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules on Review which provisions of the law are similar in content with the above cited Employment & Labour Relations Court Act and the Rules(supra). The court will apply the Employment & Labour Relations Court Act and the Rules (2016) for purposes of the instant application.
8. The court considered the grounds of the application and found that they all challenge the merit of the Judgment of the court by stating the Judge erred in law and fact in evaluation of the evidence and in reaching at its conclusions. The Applicant further avers the court erroneously failed to consider merited attached authorities of judgments under his submissions.
9. In his submissions the Applicant requests the court to redeliver fair and meritorious judgment.(see paragraphs 1,2,3 and 4). The courts finds that the Applicant submits on the merit of his case. In Paragraph 5 of the submissions the Applicant reminds the court to reconsider paragraph 35 and 36 of its judgment since the contents are contrary to the tenets of mandatory provision of Section 5 and 10 of the Employment Act. The Court finds that all these are submissions touching on merit of the decision of the court hence not proper for review under Section 16 of the Employment & Labour Relations Court Act as read together with Rule 33 of the Employment & Labour Relations Court Rules (2016).



10. The Applicant submits since the court found the dismissal of the Claimant to be lawful then tenets of Section 18 (4) of the Employment Act must be applicable in totality which states:-

“When an employee is summarily dismissed for lawful cause, the employee shall on dismissal be paid all monies, allowances and benefits due to him up to the date of his dismissal”.

11. The Court in its judgment considered the reliefs sought on merit and made finds on each of the claim and awarded what in its own judgment found was due to the Claimant. The court notes the only issue not addressed was the certificate of service which amounts to an error apparent on face of the record. The court determines that the Claimant is entitled to his certificate of service.

12. The Respondent submits that the Application does not meet the legal threshold of review for reasons that, no new evidence that was not within the Applicant’s knowledge or would not be adduced at the time and submissions are not evidence. The Respondent urges the application to be dismissed. The court agrees with the Respondent that the Application does not meet the threshold of review as it challenges the merit of decision of the court on ground of error on facts and the law. In the case of Francis Origo & Another -vs- Jacob Kumali Mungala CC.A Civil Appeal No. 149 of 2001 cited in Bethwel Omondi Okal -vs- Board of Trustees Telposta Pension and 2 others. The Court of Appeal observed that “an erroneous conclusion of the law or evidence is not ground of review but may be a good ground for appeal”.

13. The court upholds the said decision of the Court of Appeal (Supra)in the instant Application. The court has found no basis of the review as no new evidence or error or clerical error of calculations.

14. The Application lacks merit for failing to meet the criteria under Rule 33 of the Employment and Labour Relations Court Rules and is dismissed save for the issuance of certificate of costs which is not an issue raised under the Application but in submissions.

Final Court order

15. The Application for review dated 17th January 2022 is dismissed on all grounds for lack of merit. The court noted error on brought up under submissions and reviews its judgment to extent of the issuance of certificate of service only as follows:-

Judgment correction.

16. The Judgment dated 20th December 2021 in this suit is corrected to add the following order:-

The Respondent to issue the Claimant with certificate of costs pursuant to order 51 of the Employment Act.

It is so ordered.

RULING DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 26TH DAY OF MAY, 2022

J. W KELI,

JUDGE

In the Presence of:-

Court Assistant : Brenda Wesonga

Claimant: In person

Respondent :- Mr. Tarus, Senior State Counsel

