



Kenya Union of Commercial, Food and Allied Workers v Kamuga/Gaichanjiru Farmers Coop Society (Cause 26 of 2019) [2022] KEELRC 3912 (KLR) (16 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3912 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE 26 OF 2019
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
KAMUGA/GAICHANJIRU FARMERS COOP SOCIETY RESPONDENT

RULING

1. This is an application dated September 10, 2021 and seeks the following orders of court;
 1. That this application be certified urgent, service thereof be dispensed with and same be heard *ex parte* in the first instance.
 2. That the Hon court do and hereby reviews its judgment delivered on June 23, 2020 to include all the other reliefs sought in the claim since the dismissal was declared as unlawful.
 3. That the Hon court finds that the three grievants are entitled to notice pay, overtime, unpaid wages, accrued leave and service gratuity besides compensation which the court awarded following its pronouncement that the dismissals were unlawful.
 4. That the honourable court do and hereby reviews its judgment to delete underpayments which appear at paragraph 6 of the judgment since this was not part of the claim placed before the court.
 5. That the Hon court do issue any other order or relief it deems fit to address the ends of justice.
 6. That each party to bear own costs of this application.



2. The application is based on the grounds that the court having established and found a case of unlawful dismissal of the grievants, then judgment should be reviewed to reflect on award(s) as pleaded before court.
3. The respondent opposes the application *vide* grounds of opposition dated December 9, 2021. This comes out thus;
 1. The application is a sham and an abuse of the court process.
 2. The applicants claim was dismissed and the orders sought are not tenable.
 3. The applicants should follow procedure and seek necessary leave if they seek to re-instate the claim.
 4. The applicants are misusing the court.
4. The claimant brings out her written submissions dated March 14, 2022 in which she reiterates and emphasizes her claim per the application. She in the penultimate indulges the court to find in her favour.
5. The respondent in her summary written submission dated March 17, 2022 further opposes the application and submits that the claimant has not met the threshold for review.
6. In buttressing her case she seeks to rely on the authority of *Evan Bwire v Andrew Nginda* the court observed as follows;

...An application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or a case a fresh. Further in the case of *Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya*, it was held....

A mistake or an error apparent on the face of the record means a mistake or an error, which is *prima-facie* visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.

In this case there is no mistake or error apparent on the face of record, the words of the judge were very clear in the last paragraph, he stated....”There is therefore only the following in terms of reliefs for the grievant.” It therefore means the honourable judge was well aware of the other reliefs sought, they were well within his knowledge.

Further,

As was observed in *Abasi Belinda v Fredrick Kangwamu and another*-“a point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal.” A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.



7. The respondent further submits a case of inordinate delay in the filing of this application and therefore a fetter to the wellness of the application. On this she seeks to rely on the authority of *Stephen Gathua Kimani v Nancy Wanjira Waruingi T/A Providence Auctioneers* (2016) eKLR, the court held thus;

“One thing is clear in this application. The delay of one year has not been explained. Perhaps, it’s important to recall the last sentence of order 45 rule 1 (1) (b) which reads “...may apply for review of judgment to the court which passed the decree or made the order without unreasonable delay.”
8. This application must fail. The respondent case overwhelms that of the claimant/applicant. A case for review fails for want of meeting the threshold for such review.
9. The applicant has not established any error on the face of the judgment. Further, the orders sought in this application are material for appeal and not an application for review.
10. I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss Macharia for the Claimant Union
2. Mr. Kimwere instructed by Kimwere Advocate for the Respondent

