



Kenya Union of Commercial, Food and Allied Workers v New Gatari Farmers Cooperative Society Limited (Cause E011 of 2020) [2022] KEELRC 3901 (KLR) (16 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3901 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E011 OF 2020
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
NEW GATURI FARMERS COOPERATIVE SOCIETY LIMITED RESPONDENT

RULING

1. This is an application by way of notice of motion dated August 23, 2021. It comes out thus;
 1. That this application be certified urgent, service thereof be dispensed and same be heard exparte in the first instance.
 2. That the honourable court do and hereby reviews its judgment delivered on July 19, 2021 following the new evidence which is an order from the Chief Magistrate’s Court at Murang’a in Cr No 1061 of 2019.
 3. That the honourable court do find that the two grievants were acquitted from all the offences they were accused of in Cr No 1061 of 2019 and they are therefore entitled to all reliefs sought in cause E011 of 2020.
 4. That the honourable court finds that in its Judgment at page 7, 1st paragraph, last sentence
“this matter must await the full determination of the issues involved before the issued now in dispute placed on the table for resolution”
means the matter was to be stood over generally awaiting the outcome in the criminal case which case is now concluded hence the need to correct the judgment.



5. That the honourable court do issue any other order or relief it deems fit to address the ends of justice.
6. That each party to bear their own costs of this application.
2. It is based on the grounds that on July 19, 2021 this court issued judgment on a claim for due and unpaid salaries.
3. Again, the judgment posed that

“this matter must await the full determination of the issues involved before the issues now in dispute placed on the table for resolution.”
4. On June 9, 2021, the grievants were acquitted and therefore the justification for a review of the judgment and orders of court in view of this development. That their salaries should be effected now that an acquittal has ensued.
5. The respondent in a replying affidavit sworn on March 7, 2022 denies the acquittal and avers that the grievants were only discharged pending further investigations. This was not a bar to further proceedings.
6. Further, the claimants resigned from employment on their own volition and no termination of employment occurred or was effected on them. Under these circumstances, they were paid all their dues on resignation and therefore are not owed a farthing. It would therefore be unfair and unjust to review this judgment as set out.
7. The respondent in her written submissions dated April 19, 2022 submits as follows;

“For an applicant to succeed for review orders the applicant must prove that there is new and important matter that could not have been produced by the applicants at the time when a ruling or judgment was made.

... we submit that the grievant were discharged by the criminal court on the June 9, 2021, while the judgment in this court was delivered on the July 19, 2021, if the said discharge ought to have been useful to the claimant, the claimant ought to have arrested the judgment”
8. Further, she seeks to rely on the authority of *Evan Bwire v Andrew Aginda* Civil Appeal No 147 of 2006 the court held thus;

“An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence.”
9. Again, in the case of *Jersey Evening Post Limited v AL Thani* [2002] JLR 542 at 550, the court held thus;

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally (sic).”



10. This is not a meritorious case for review of judgment. This is because the applicant has not met the criterion for such review. She has not demonstrated a case of new evidence that was unavailable at the time of trial and judgment and now relevant to the case. The application must therefore fail.
11. 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.

DK NJAGI MARETE

JUDGE

Appearances

1. Miss Macharia instructed by the applicant Union.
2. Mr Wanjiru Mcharia hoding instructed by Kimwere Josphat & CoAdvocates for the respondent Union.

