



**Kirathe v Teachers Service Commission & another (Cause 1966 of 2015)
[2022] KEELRC 14664 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14664 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1966 OF 2015
M MBARŪ, J
OCTOBER 27, 2022**

BETWEEN

MUCHIRI KIRATHE CLAIMANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

CHEGE CLAIRE WANJIKU T/A SHABAAN & CO

ADVOCATES 2ND RESPONDENT

RULING

1. The claimant filed Certificate of Urgency dated August 17, 2022 to support application dated June 4, 2021 seeking for orders that the law firm of Shabaan Association LLP unlawfully registered the claimant Cause No ELRC 1966 of 2015 afresh under case No ELRCC/E552/2020 on September 21, 2020 prior to the judgement on October 27, 2020 for Cause No ELRC 1966 of 2015.
2. The claimant is also seeking that the court should reveal the identity of Shabaan Associates LLP to the claimant on the grounds that the 2nd respondent, who was the Advocate on record from October 28, 2019 to October 27, 2020 has already admitted to being responsible for the:
 - a. Unauthorised online registration of Cause Number 1966 of 2015 as case number ELRCC/E225/2020 on September 21, 2020.
 - b. Unauthorised online filing of the submission in the unauthorised registration case file number ELRC/E225/2020 on September 27, 2020. ...
3. The application is supported by the affidavit of the claimant who avers that the 2nd respondent communicated to the 1st respondent to inform them that the law firm had filed online the submissions on the Judiciary e-filing portal. The 2nd respondent through email dated October 28, 2020 terminated



- the legal services agreement stating the agreement signed was to provide services until judgement of Cause No 1966 of 2015 and any other action after that would require a new agreement and new terms.
4. Case No ELRC 1966 and ELRCC/E255/2020 were the only two registered cases with online files in the claimant's Judiciary e-filing account before and on October 27, 2020 when the judgement was delivered.
 5. The 1st respondent filed Grounds of Opposition on the basis that the application by the claimant is bad in law and in abuse of the court process and raises no reasonable cause of action against the 1st respondent and judgement herein has been delivered and the court is functus officio and has no jurisdiction and the same should be dismissed with costs.
 6. The claimant filed written submissions that the 2nd respondent was on record until October 27, 2020 when judgement herein was delivered without the claimant's written submissions and authorities. The 2nd respondent filed unauthorised submissions and authorities in ELRC No E255 of 2020 and the claimant filed the damages claimed due to the collusion of the respondents since the 1st respondent never objected to the unauthorised actions by the 2nd respondent.

Determination

7. The application before court is seeking that the court finds the firm of Shabaan Associates LLP unlawfully filed submissions and authorities in ELRC NoE225 of 2020 instead of filing herein where the claimant was seeking damages and the same was therefore not put into account by the court in the judgement delivered on October 27, 2020.
8. However, under the respondents cited herein, the alleged actions by the Firm of Shabaan Associates LLP are associated against the 2nd respondent cited as Chege Claire Wanjiku t/a Shabaan & Co. Advocates.
9. The court has since delivered judgement herein as admitted by the claimant on October 27, 2020. The substantive issues addressed in the judgement are not faulted. The findings of the court are not challenged. The judgement remains valid to date.
10. The matter that the 2nd respondent filed unauthorised submissions and authorities is not contradistinguished as to whether the judgement of the court did not take this into account and if so, whether the claimant exercised his right of review or right of appeal as allowed under Section 16 and 17 of the *Employment and Labour Relations Court Act*, 2011 and where the claimant finds the 2nd respondent as his former advocates acted in a prejudicial manner and leading to any loss or damage, recourse is not an application as done herein.
11. The court finds no matter to justify a grant of the orders sought. The prejudice suffered is not addressed. The injury to be addressed is not stated.
12. The matter herein was largely between the claimant and the 2nd respondent. It was not necessary to drag the 1st respondent into these proceedings. The claimant shall therefore meet costs due to the 1st respondent and acting in person costs of Kshs 20,00 shall be appropriate.
13. Certificate of Urgency dated August 17, 2022 and the attendant application dated June 4, 2021 are hereby found without good basis and dismissed with costs to the 1st respondent. Costs assessed at Kshs 20,000.

DELIVERED IN COURT AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022.

M. MBARŪ JUDGE



In the presence of:

Court Assistant: Okodoi

