



**Oduol v County Public Service Board of Siaya & another (Petition  
34 of 2020) [2022] KEELRC 13313 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13313 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION 34 OF 2020  
S RADIDO, J  
NOVEMBER 30, 2022**

**BETWEEN**

**JOEL OCHIENG ODUOL ..... PETITIONER**

**AND**

**COUNTY PUBLIC SERVICE BOARD OF SIAYA ..... 1<sup>ST</sup> RESPONDENT**

**GOVERNOR, COUNTY OF SIAYA, CORNEL RASANGA**

**AMOTH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 27 January 2022, the Court issued directions which included the filing of submissions on a jurisdictional question:  
Whether the Court had jurisdiction in light of Article 234(2)(i) of *the Constitution*.
2. Since the Petitioner was not present, the Court directed the Respondents' advocate to notify him of the directions ahead of judgment on 6 April 2022 (the judgment was delivered on 11 April 2022 as the Court did not sit on the first scheduled date).
3. None of the parties filed the submissions.
4. Nevertheless, the Court delivered the judgment, held that it had no jurisdiction, and struck out the Petition with costs.
5. On 8 August 2022, Joel Ochieng (the applicant) filed an application seeking the following prayers.
  - a. Spent
  - b. Spent



- c. That the Honourable Court be pleased to grant Orders re-opening up the matter and allow the Petitioner to file submissions in respect to the jurisdiction of the Court to hear and determine the Petition.
  - d. That the Honourable Court be pleased to grant orders re-opening the matter and allow the Petition to file submissions in respect to the merits of the Petition filed on September 14, 2020.
  - e. That costs of this Application be provided for.
6. The Respondents caused a replying affidavit in opposition to the application to be filed on 23 September 2022, and consequent upon further directions, the applicant filed submissions on 24 October 2022 (should have been filed/served before 14 October 2022). The Respondents filed joint submissions on 19 October 2022.
  7. The main grounds in support of the application were that the advocate on record for the applicant was unable to log into the virtual court platform on 27 January 2022 when the Court issued directions; that attempts to get an update from the registry failed because the file was in the judge's chambers; that the Respondent did not notify the applicant of the directions as ordered by the Court and that the applicant only stumbled upon the judgment on 4 August 2022 while researching on an unrelated case.
  8. On the question of jurisdiction, the applicant drew a distinction between the authority the Court had considered to decline jurisdiction (*Secretary, County Public Service Board & Ar v Hulbbai Gedi Abdille* (2017) eKLR on the ground that it concerned judicial review proceedings while the dispute before the Court was a Constitutional Petition.
  9. The applicant further made the point that the County Public Service Board had not made a decision capable of being appealed to the Public Service Commission (the Governor allegedly made the decision).
  10. The Respondents opposed the application by asserting that the applicant had not demonstrated he made follow-up after being informed the file was in chambers; that none of the parties filed submissions and, therefore, no party had an edge over the other; that the question of jurisdiction was settled and nothing would change even if the hearing were re-opened; that the applicant had not placed before the Court a copy of the submissions it wanted it to consider to change its mind and the applicant could institute a fresh suit or appeal.
  11. The Court has considered the application, affidavits, and submissions and come to view that allowing the Motion would not serve any purpose for the following reasons.
  12. First, the power to set aside an *ex-parte* judgment is discretionary. In exercising that discretion, a Court is guided by the need to avoid injustice and hardship resulting from accident, inadvertence or excusable mistake or error, but not to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice. (See *Shah vs. Mbogo & Ar* (1967) EA 116).
  13. In the present case, the applicant has not explained why he went silent for nearly 7 months after failing to log in to the virtual Court.
  14. It is evident that he was only spurred into action when he stumbled upon the judgment some 7 months after the giving of directions. Equity favours the vigilant, not the indolent.
  15. Two, the applicant has not disclosed the particulars of the registry staff he communicated with.
  16. Three, the applicant has not filed any draft submissions before the Court to establish whether the submissions would have affected the findings in the judgment.



17. Four, the Court struck out the Petition before a hearing on the merits and, therefore, the applicant has other viable legal options to consider.
18. Five, the Court rendered itself on whether the Petition raised constitutional issues warranting invoking its constitutional jurisdiction when it gave directions on 26 November 2022.
19. Lastly, the applicant's conduct in prosecuting the Motion under consideration appeared casual. He did not file and serve the submissions within the timelines agreed upon with the Court on 26 September 2022.

### **Conclusion and Orders**

20. For the above reasons, the Court finds no merit in the Motion, and it is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF NOVEMBER 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **Appearances**

For applicant TripleOKLAW LLP Advocates

For Respondents Olendo, Orare & Samba Advocates, LLP

Court Assistant Chrispo Aura

