



**Republic v Lake Basin Development Authority; Chere (Exparte) (Judicial Review E015 of 2022) [2022] KEELRC 13465 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13465 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW E015 OF 2022  
CN BAARI, J  
DECEMBER 8, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAKE BASIN DEVELOPMENT AUTHORITY ..... RESPONDENT**

**AND**

**FREDRICK ONYANGO CHERE ..... EXPARTE**

**RULING**

1. Before court is the respondent's motion dated October 24, 2022, brought pursuant to order 51 rule 1 and order 53 rule 4 of the *Civil Procedure Rules*. The respondent seeks orders that: -
  - i. Spent
  - ii. This honourable court be pleased to review, vary and set aside the order dated October 11, 2022, which granted stay of enforcement or implementation of the letter of summary dismissal addressed to the Applicant on September 22, 2022.
  - iii. The issue of leave to operate as stay be argued inter parties in accordance with Order 53 Rules 1 (4) of the *Civil Procedure Rules*.
  - iv. The costs of the application be costs in the cause.
2. The motion is support by the grounds listed on the face of it and the affidavit of Henry Nyagaka Makori, sworn on October 24, 2022.
3. The Respondent's argument is that while the court gave orders granting leave to operate as stay of the Applicant's summary dismissal, the dismissal had already taken effect, and the *ex-parte* Applicant



removed from the Respondent's payroll, and which removal was sanctioned by the Principal Secretary, Department of Regional Development.

4. It is the Respondent's position that the decision had already taken effect and there was nothing left to stay. It is the Respondent's further assertion that communication had been made to the Applicant on the effective date of the decision vide a letter dated October 14, 2022.
5. The *ex-parte* Applicant opposed the motion vide a Replying affidavit dated November 2, 2022. The Applicant avers that this application is only intended to avoid compliance with the orders of the court, being that no payroll correction advice has been issued or served on him in accordance with Clause 1.2.91 of the Respondent's Human Resource Policy and Procedure Manual.
6. It is the *ex-parte* applicant's assertion that the Respondent's Human Resource Policy requires that upon dismissal, the employee has a window of six (6) months before removal from the payroll, and that a removal advise has to be served. Counsel further submits that the timelines on the occurrence of events in this matter, is an indication of bad faith on the part of the Respondent.
7. The *ex-parte* applicant further avers that contrary to the Respondent's assertion, the Ministry has no role in the disciplinary process of the Respondent.
8. It is submitted for the *ex-parte* applicant that nothing has been placed before court to show that the decision had been implemented, and hence their prayer that the motion be dismissed.

#### **Determination**

9. I have considered the motion, the replying affidavit and the oral submissions by both Counsels. The issue that fall for determination is whether the court should review, vary or set aside the orders issued on October 11, 2022.
10. Rule 33(1) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#), states as follows in respect of review:

“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 no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

  - (a) if there is discovery of 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 the 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.... (emphasis mine)”
11. Mativo J in [Bethwel Omondi Okal v Managing Director KPLC and Co](#) [2017] eKLR, upholding the finding in [National Bank of Kenya Ltd v Ndungu Njau](#) [1996] KLR 469 (CAK) at Page 381 held thus:-

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another judge could have taken a different view of the



matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

12. The Respondent has hinged her application on the contention that the impugned decision had already taken effect and there was nothing left to stay. At no point in the application or in the oral submissions, did Counsel indicate there having been a discovery of new evidence, an error or omission on the part of the court, as to warrant a review of the orders earlier granted.
13. Whether the orders issued herein can or cannot be sustained, is an issue that can only be determined upon hearing of the substantive application that gave rise to the orders subject of this application. As correctly submitted by Counsel for the Ex-parte Applicant, a court can order stay of a decision subject of Judicial Review, even where the decision has been fully implemented. (See *Republic v Kenya Airports Authority & another; Abel Gogo & another (Interested Parties) Ex parte Irene Elizabeth Wanjiku Kisangi* [2021] eKLR)
14. In whole, I find and hold that the respondent’s application does not meet the threshold for review and setting aside of the orders of the court.
15. It is dismissed with costs.
16. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Ms. Osongo present for the *Ex-Parte* Applicant.

N/A for the Respondent

Christine Omollo – C/A

