



**Kenya Union of Domestic, Hotels, Educational Institutions and
Hospital Worker [KUDHEIHA] v Shree Swaminarayan Academy (Cause
695 of 2016) [2022] KEELRC 13357 (KLR) (1 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13357 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 695 OF 2016
AK NZEI, J
DECEMBER 1, 2022**

BETWEEN
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKER [KUDHEIHA] CLAIMANT**
AND
SHREE SWAMINARAYAN ACADEMY RESPONDENT

RULING

1. Judgment in the suit herein was delivered by this Court (Ndolo, J) on 27th November 2019, whereby the suit was dismissed with costs to the Respondent. There is no indication that any appeal was preferred against the said judgment.
2. Over two years later, on 9th March 2022, the Claimant/Applicant filed the Notice of Motion dated 3rd March 2022, seeking orders:-
 - a. that the Honourable Court be pleased to interpret the judgment delivered on 27th November 2019.
 - b. that the Respondent failed to implement the collective bargaining agreement as agreed by the parties.
 - c. that costs of the application be provided for by the Respondent.
3. The application is supported by an affidavit sworn on 3rd March 2022 by one Zacheaus Osore. It is deponed in the said affidavit:-
 - a. that after delivery of this Court's judgment on 27th November 2019, the Claimant/Applicant requested for a joint meeting on the way forward but the Respondent rejected the request.



- b. that having been aggrieved by the Respondent's actions, the Claimant/Applicant has returned to this Court for interpretation of its judgment.
 - c. that this Court has the mandate and jurisdiction to hear and to determine the matter under Articles 23 and 162 of the Constitution of Kenya, Section 12 of the Employment and Labour Relations Court Act and Section 74 of the Labour Relations Act.
4. The application is opposed by the Respondent which filed grounds of opposition dated 21st April 2022 stating:-
- a. that the application is frivolous, vexatious, a non-starter and an abuse of the Court's process.
 - b. that this Court (Ndolo, J) delivered its judgment on 27th November 2019 dismissing the Claimant's case with costs.
 - c. that in dismissing the Claimant's suit, the Hon. Judge called for the original file containing the CBA registered by the Court in File CA No. 165 of 2015, and observed that "it is evident that the page carrying the schedule of the basic minimum wage differed in material respects from the rest of the pages making up the CBA."
 - d. that the Claimant's application, filed close to three years after the delivery of judgment, is a waste of judicial time.
 - e. that litigation must come to an end.
 - f. that the Court lacks jurisdiction to hear and to determine the application, final judgment having been delivered on 27th November 2019.
5. Both parties filed written submissions on the application pursuant to this Court's directions in that regard, which I have considered.
6. I do agree with the Respondent that this Court lacks jurisdiction to re-open its final judgment delivered on 27th November 2019, for whatever reason or purpose. The principle of *functus officio* is called in aid. The Respondent cited the case of Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others [2013] eKLR where the Supreme Court stated as follows:-
- "...the *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality.
- According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter... the (principle) is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision maker."
7. This Court cannot revisit its judgment delivered on 27th November 2019 in the manner sought, or in any other manner. The Claimant/Applicant ought to have appealed against the judgment if it was aggrieved by it in any way. The judgment was not appealed from; and there having been no application filed under Rule 33 of this Court's Rules within the permissible time, the suit herein stands finalized, save for taxation of the Respondent's costs award by dint of the said judgment, if the same have not been taxed already.
8. In sum, I find no merit in the Claimant's Notice of Motion dated 3rd March 2022, and the same is hereby dismissed with costs.



9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 1ST DAY OF DECEMBER 2022

AGNES KITIKU NZEI

JUDGE

Order

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

N/A for Claimant/Applicant

Mr. Maiga Respondent

