



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

MISCELLANEOUS APPLICATION NO.16 OF 2020

(Before D.K.N.Marete)

ZACHARY MWANGI MURIU.....CLAIMANT

VERSUS

G4S SECURITY SERVICES (K) LTD.....RESPONDENT

RULING

This is an application dated 14th October, 2020 dubbed certificate of urgency;

1. *This matter proceeded for hearing on 14th /23rd /30th of July and 1st of October when this motion was dismissed with the cost of the respondent in the absence of the claimant.*

2. *The claimant through no fault of his own, been condemned an heard: the defence on record raised very triable issues and it is only fair and just that this ruling made on 1st October 2020 be reviewed and the claimant be given an opportunity to present his evidence on matters in dispute.*

3. *That if this ruling made on 1st October 2020, it is not reviewed and the claimant given an opportunity to be heard, the respondent will benefit most from his deceiving notices of motion and the claimant will suffer more than twice i.e. notice of 30th July 2020. (See pg.1 behind).*

4. *That since the appearance of HHM Company Advocates for the respondent, the claimant has never been given a chance to argue his application: the video operator has been locking him out of the conference hall alleging poor network. This has frequently happened only when his time comes and during his hearing dates: yet through the WhatsApp group you can understand that everything goes well until when his time comes then the network disappears. The disappearance of the network was a booster to the respondent's win.*

5. *That twice the claimant has made a report to Nanyuki Police Station after the hacking of his email by unknown operators and the disappearance of the most important information pertaining this application. The report was made on 30th July 2020 and 13th October 2020. (See pg.2 behind)*

6. *The documents that disappeared are:*

- The information from H/R G4S that said G4S will win despite them not attending the court sent on 31st September 2020.*
- HHM's advocate report of between 23rd-28th July 2020.*
- The communication between the claimant and E.L.R.C Registry.*

7. *That on 30th July 2020 HHM Co.Advocates sent the claimant a sermon that the court directed his application to be heard in an open court on 1st October 2020 which was never to be: at around 9:30am the E.L.R.C Registry told him that there was no such plan. His efforts to join the conference hall through the link were blocked. (See pg.1 behind)*

8. *That after the claimant was told that his file was returned back to the registry on Monday 12th October 2020, he went on 13th October 2020 to peruse his file.*

9. That this application has been made without any delay.

10. No prejudice that will be severed by the respondent if this application is heard and the order sought granted urgently.

11. That my application be heard in an open court.

12. That the payment of this application be made from the claimant's over payment of Kshs.375 made on 30th July 2020. (See page 3 behind)

13. That I will take less than 10 minutes.

The Respondent in opposition and through her Grounds of Opposition faults the application for being frivolous, vexatious and an abuse of the process of court. It is her case and submission that the Claimant/Applicant has failed the test for review in that he has not demonstrated that;

a) *There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge at the time when the decree was passed or the order made;*

b) *There was some mistake or error apparent on the face of the record;*

c) *The judgment or ruling requires clarification; or*

d) *He has sufficient reason to seek the review.*

He has not provided a sufficient reason for a review of the orders of 1st October 2020 and only claims that the video operator locked out of the court session.

The Respondent in further buttressing of her case sought to rely on the authority of **Republic v Chairman Co-operative Tribunal & 8 Others Ex-Parte Management Committee Konza Ranching & Farming Co-Operative Society Ltd (2014) eKLR**, where the court observed thus;

"..The circumstances in which abuse of the process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes on the extrinsic evidence only. But if and when it is shown to have happened, it would be wrong to allow the misuse of that process to continue."

Again, in the case of **Yusuf Gitau Abdallah v Building Centre (K) Ltd & 4 others (2014) eKLR** the court held that;

"The court is also alive to a judicial practice, doctrine to the effect that a court of law is a court of justice and not a court of sympathy. Further that when a litigant chooses to litigate on his own human he should be taken to be competent to comprehend the court procedures and be able to conduct his/her proceedings smoothly and at no time should the standard required to be met by such litigants' papers be less than that required of a litigant assisted by legal advice.. That both stand on equal footing before the feet of justice."

It is the Respondent's further case and submission that in bringing out this application, the Claimant fell into the trap of inordinate delay in filling the application. The delay was unreasonable in that the ruling which dismissed the claimant's application dated 23rd June, 2020 was delivered on 1st October, 2020. The Claimant only inquired about the matter and visited the registry on 13th October, 2020 and ultimately filed the certificate on 16th October, 2020. This is inordinate delay.

In such support, the Respondent to rely on the authority of **Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers v Talai Secondary School (2016) eKLR** where the court observed as follows;

Inordinate delay would be a matter to be determined on the peculiar facts or circumstances of each case, depending on the circumstances, a delay of even one day may be inordinate while a delay of 7 months may not be inordinate.

I agree. The Claimant/Applicant was and has been casual and careless in his litigation of this application. His conduct smacks off inordinate delay in the circumstances.

The Respondent's case overwhelms that of the Applicant. The Applicant cannot seek the courts sympathy on grounds that he appears in person. Like is submitted by the Respondent, he takes total responsibility for the prosecution of his case, being fully aware of this duty and the responsibility thereto.

The Claimant/Applicant again cannot blame technology for his inadequacies. He had ample time to address his default and come out claim on filing of this application. The delay involved is inordinate and inexcusable.

Overall, it would not be untoward to agree with the Respondent that this application is frivolous, vexatious and an abuse of the process of court. What with the wanton and unverified allegations made by the Claimant/Applicant in support of his case.

I am therefore inclined to dismiss this application with orders that each party bears the costs of their application.

Dated and delivered at Nyeri this 25th day of February 2021.

D.K.Njagi Marete

JUDGE

Appearances

1. Claimant/Applicant in person
2. Ms.Odiero holding brief for Makori instructed by Hamilton Harrison & Mathews for the Respondent.