



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**PETITION NO. 71 OF 2018**

**MAJOR (RTD) JOEL KIPRONO ROPROP.....PETITIONER**

**VERSUS**

**COUNTY SECRETARY-**

**COUNTY GOVERNMENT OF BOMET.....1<sup>ST</sup> APPLICANT/RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD**

**BOMET COUNTY .....2<sup>ND</sup> APPLICANT/RESPONDENT**

**COUNTY GOVERNMENT OF BOMET..... 3<sup>RD</sup> APPLICANT/RESPONDENT**

**RULING**

1. The Applicant vide Application dated 28/5/2020 prays for an Order to review the Judgment of the Court delivered on 9/3/2020 on grounds that the Court erroneously found that a replying affidavit had not been filed by the respondents.

2. The respondents have attached a copy of a replying affidavit to the petition filed on 14/10/2018 which was apparently not on record at the time the Court delivered its judgment

3. The Court finds that in view of this fact, there is an error apparent on the face of the judgment of Court at paragraph 4 of the Judgment where the Court found: -

**‘the respondents did not file any response to the petition and so the facts set out in the petition have not been contradicted and/or traversed.’**

4. The Court has considered the contents of the replying affidavit in which the respondents under paragraphs 4,5, 6, 7, 8, 9, and 10 state that the 2<sup>nd</sup> respondent is mandated under Section 59 of the County Government’s Act to recruit and fill vacant positions and was doing so lawfully as it has always done in the past.

5. That candidates are invited, shortlisted and interviewed before shortlisting is done. That advertisements are done pursuant to requests by departments, based on their needs.

6. That in this case the decision to recruit was initiated by line departments through the office of the County Secretary and therefore, the allegations by the Petitioner is baseless and ill-conceived and that the Petitioner is a busy body that has filed numerous claims against the 2<sup>nd</sup> respondent.

7. That the petition be dismissed with costs.

8. The mandate of the Court seized with an application for review is not to rewrite a judgment already delivered but to correct an error on the face of the record of the judgment and any consequence emanating from the said error.

9. The Court has corrected its error under paragraph 4 of the judgment and finds that the replying affidavit by the respondents had been inadvertently missing in the file at the time of judgment. The Court has now considered the aforesaid deposition by the 2<sup>nd</sup> respondent and has come to the conclusion that the same does not materially alter the finding of the Court in answer to issues set out in paragraph 59(a) (b) and (c) of the Judgment.

10. The Court does not therefore alter, review and/or set aside its findings of fact and law under paragraphs 8, 9 and 10 of the Judgment.

11. The application for the review of the judgment of the Court dated 9/3/2020 lacks merit save for the error duly corrected and is dismissed with no order as to costs.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of February, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Amule for Rodgers for Petitioner

Mr. Okello for Koech for Respondent

Chrispo: Court clerk