



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

ELRC PETITION NO.1 OF 2020

(Before D.K.N.Marete)

KENYA UNION OF PRE-PRIMARY

EDUCATION TEACHERS.....PETITIONER

VERSUS

THE BOARD OF MANAGEMENT

THINGITHU PRIMARY SCHOOL.....RESPONDENT

AND

THE ATTORNEY GENERAL.....1ST INTERESTED PARTY

TEACHERS SERVICE COMMISSION.....2ND INTERESTED PARTY

RULING

This is an application dated 7th December 2020 and comes out as follows;

1. *That this application be certified urgent.*
2. *That this honourable court be pleased to review its judgment delivered on 30th July 2020 by Justice Nzioki wa Makau and set aside the order striking out the Petition dated 5th February 2020 and reinstate the Petition dated 5th February 2020.*
3. *That this honourable court be pleased to grant leave to the Applicant to file an application of joinder of necessary parties so as to cure the suit.*
4. *That costs be in the cause.*

It is grounded thus;

- i) *The members of the Petitioner are highly prejudiced by the decision of the court to strike out the Petition as the violations complained of in the Petition are still being perpetuated by the respondent.*
- ii) *The Applicant is optimistic that this honourable court may be guided by the principle of fair hearing without regard to undue technicalities as espoused under Article 50(1) and 159(2) (d) of the Constitution of Kenya.*
- iii) *This honourable court has a latitude to suo moto, direct any party who in its opinion bears significant presence in the suit.*
- iv) *The honourable court may be guided by the principle that no Petition shall fail because of misjoinder or non-joinder of parties thereon.*
- v) *This honourable court may live up to its promise to have this matter resolved before the schools open as the parties are*

threatened with strained relationship at expense of the vulnerable pupils.

vi) The members of the Petitioner will suffer irreparable prejudice in the event this instant application is not allowed.

vii) It is only just and equitable that the judgment in focus is reviewed, and the prayers sought herein granted.

The Respondent and 1st Interested Party, the Attorney-General, deny the viability of the application and prays that this be dismissed with costs.

It is their case that this application is otherwise an abuse of this court's process as same is seeking an order of review yet the Petitioner/Applicant has not satisfied or demonstrated that any of the thresholds required for a grant of an order for review under rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 have been met. In particular:

i) The Petitioner has not demonstrated discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Petitioner at the time the Petition was heard or when the decree was passed.

ii) The Petitioner has not demonstrated existence of any mistake or error apparent on the face of the record;

iii) The Petitioner has not demonstrated or shown that the impugned judgment requires any clarification; and

iv) The Petitioner has not demonstrated any other sufficient reason as to warrant a review.

It is their further case and submission that the Petitioner cannot be heard to raise an issue of joinder or lack of it, having squandered an open opportunity granted by this court for so doing in an earlier ruling of court.

I agree.

This application is as set out does not conform to the criteria and legal principal for review. The Respondents and 1st Interested Parties case surmounts that of the Petitioner/Applicants. The application therefore fails on this ground.

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

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF JUNE, 2021.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr.Samuel Opiyo for the Petitioner/Applicant

2. Mr.Njoroge instructed by state Law Office for the Respondent and the 1st Interested Party.