



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1998 OF 2017**

**KENYA NATIONAL UNION OF NURSES.....CLAIMANT**

**VERSUS**

**SALARIES AND REMUNERATION COMMISSION.....1<sup>ST</sup> RESPONDENT**

**MOI TEACHING AND REFERRAL HOSPITAL BOARD.....2<sup>ND</sup> RESPONDENT**

**COUNCIL OF GOVERNORS.....3<sup>RD</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION.....4<sup>TH</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY MINISTRY OF HEALTH**

**COUNTY PUBLIC SERVICE BOARDS.....5<sup>TH</sup> RESPONDENT**

**CONSULTATIVE FORUM.....6<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF EAST AFRICAN**

**COMMUNITY LABOUR, AND SOCIAL PROTECTION.....7<sup>TH</sup> RESPONDENT**

**THE NURSING COUNCIL OF KENYA.....8<sup>TH</sup> RESPONDENT**

**RULING**

1. The application serving before Court is brought under Rule 35(1) of the Employment and Labour Relations Court (procedure) Rule 2016 seeking review of the Judgment delivered by Hon. Justice Nelson Abuodha on 20<sup>th</sup> September, 2019.
2. The application is premised on the reasons set out on the face of the application that there is discovery of new important matter by way of correspondence being a letter dated 20<sup>th</sup> July, 2018 forwarding union final recommendations on salary grading and the union is in possession of a reply from the 1<sup>st</sup> respondent dated 23<sup>rd</sup> July, 2018 which was not within the knowledge of the applicant at the time the judgment was delivered and that there is glaring omission on the 2<sup>nd</sup> respondent's (MRRH) written submissions on record that was not considered during the delivery of the Judgment.
3. The application is supported by an affidavit of Tyson Inoti in which he states that during the pendency of the suit, the union forwarded its final proposal on job evaluation for nurses vide a letter dated 20<sup>th</sup> July, 2018 attached to the affidavit and that after exercising dire diligence the union is in possession of reply to the union final proposal on job evaluation which was hand received dated 23<sup>rd</sup> July, 2018 in which the Salaries and Remuneration Commission stated that the issue of job grading is under the purview of the commission but declined the request for a meeting to discuss the issues of job evaluation for nurses in the said letter and that the matter would be dealt with by the succeeding commission as their term was at an end.
4. That the applicant has further discovered another letter dated 22<sup>nd</sup> August, 2017, in which the Council of Governors stated that employers were willing to jointly revise the job evaluation and description for nurses' cadre in order to present an appeal to Salaries and Remuneration Commission. However, this did not materialize.

5. That therefore, the union having forwarded its final proposal on job evaluation for nurses, and the respondent declining to have a meeting with the union and or consider their proposal is a new important matter that was not brought before the Court prior to the issuance of the Judgment.

6. The 4<sup>th</sup> and 5<sup>th</sup> respondents filed grounds of opposition to the application dated 18<sup>th</sup> January, 2021 to wit that judgment was delivered on 20<sup>th</sup> September, 2019 and the application filed on 17<sup>th</sup> November, 2020 was visited with inordinate delay.

7. That there is no discovery of new and important new matters because the said correspondence was in the possession and knowledge of the applicant during the hearing of the suit and delivery of the judgment.

8. That the alleged correspondence dated 20<sup>th</sup> July, 2018 and 23<sup>rd</sup> July, 2018 was in existence before the pleadings in the suit were closed on 13<sup>th</sup> May, 2019. That the applicant has not disclosed any justification for the review of the Judgment of the Court.

9. The 2<sup>nd</sup> respondent filed replying affidavit sworn to on 10<sup>th</sup> December, 2020 in which the deponent states that in the Judgment of the Court delivered on 28<sup>th</sup> September, 2019, the Court directed parties to make use of the available alternative dispute resolution mechanism at their disposal to resolve the dispute

10. That by a letter dated 8<sup>th</sup> December, 2020, the 2<sup>nd</sup> respondent shared the said job Evaluation Basic salary structure for MTRH with the applicant thus the substructure of the Amended claim is resolved. The said letter is annexed.

11. That the structure will be captured in the 2021 – 2025 Collective Bargaining Agreement between the claimant and the 1<sup>st</sup> and 2<sup>nd</sup> respondent that is currently under review by the 1<sup>st</sup> respondent and subjecting the parties to fresh litigation may impede the process.

12. The 2<sup>nd</sup> respondent did not file submissions in this matter as alleged by the applicant or at all. That the application be dismissed with costs.

13. The Court has carefully studied the initial pleadings in the suit and lists of documents filed before the Judgment of the Court was delivered on 20<sup>th</sup> September, 2019.

14. The Court notes that the application for review was filed on 17<sup>th</sup> November, 2020, about one year and two months from the date of Judgment. On this score alone, the application must fail for being filed after inordinate delay which delay is prejudicial to the respondents.

15. Further, having carefully examined the provisions of Section 33 of the Employment and Labour Relations Court (**procedure**) Rules 2016, which reads: -

(1) “ 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.

16. The Court is not satisfied that the applicant has placed before Court sufficient justification for the Court to review the Judgment of the Court. The letters said to be new information, discovered upon due diligence were indeed in possession of the applicants at the time pleadings closed and more so, before the Judgment of the Court was delivered on 20<sup>th</sup> September, 2019.

17. Matters relied upon constitute competent grounds of appeal if at all the applicant was dissatisfied with the Judgment of the Court. No such appeal was preferred against the judgment.

18. Accordingly, the Application lacks merit and is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF SEPTEMBER, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

KNUN – Applicant

M/s Wafula for 1<sup>st</sup> Respondent

M/s Oyugi for 4<sup>th</sup> and 5<sup>th</sup> Respondent

Kiplagat for 2<sup>nd</sup> Respondent

Ekale – Court clerk.