



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO. E060 OF 2020

POLYCARP AKOKO OCHIENG.....PETITIONER

VERSUS

NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT

RULING

1. The Petitioner, Polycarp Akoko Ochieng filed a review application dated 20th April 2021. In the application, he seeks to review the Honourable court's decision delivered on 16th March 2021 and the gravamen of his notice of motion application is, to extensively borrow his words, 'the judgment has an error apparent on the face of the record in that the judgment was made under the fallacious assumption that commissioner Murshid Mohammed was present during the vetting interview of 23rd August 2016; that the judgment was made under the fallacious assumption that Commissioner Murshid Mohammed could lawfully sign the decision dated 6th December 2016; that the judgment was made under the fallacious assumption that the decision dated 6th December 2016 was regular/lawful; that the judgment was based on the fallacious assumption that there was a decision capable of being reviewed by the vetting review panel; that the judgment was given under the fallacious assumption that Commissioner Johnstone Kavuludi participated in the vetting review process of 13th July 2017 held at Skypark Plaza' among other similar grounds.

2. The Petitioner labours under the false view that a misapprehension of the 'facts' he presented are grounds for review. Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-

33(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.

2. An application for review of a decree or order of the Court under subparagraphs (b), (c) or (d), shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station.

3. A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or Ruling or order to be reviewed.

4. The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.

5. Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

6. An order made for a review of a decree or order shall not be subject to further review. (emphasis supplied)

3. If the Petitioner was aggrieved by the decision on the grounds he elaborately sets out in his motion, the only option open to him was for an

appeal to the Court of Appeal and not a review before this Court. The grounds for a review are above and not the fallacious list produced by the Petitioner in his motion which as is evident from a clear reading of the Rules unmerited and only fit for dismissal with costs as I hereby do. Motion dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2021

NZIOKI WA MAKAU

JUDGE