



**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT BUNGOMA**

**MISC APPLICATION NO. E001 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR LEAVE OF JUDICIAL REVIEW FOR ORDERS OF CERTIIRARI AND  
MANDAMUS**

**REPUBLIC.....APPLICANT**

**AND**

**WILSON SABWAMI.....APPLICANT**

**v**

**THE PRINCIPAL/SECRETARY, BOARD**

**OF MANAGEMENT, ST PATRICKS NAITIRI HIGH SCHOOL.....1<sup>st</sup> RESPONDENT**

**CHAIRMAN, BOARD OF MANAGEMENT**

**ST PATRICKS NAITIRI BOYS HIGH SCHOOL.....2<sup>nd</sup> RESPONDENT**

**AND**

**ST PATRICKS NAITIRI BOYS HIGH SCHOOL.....INTERESTED PARTY**

**RULING**

1. Wilson Sabwami (*ex-parte* applicant) filed a Chamber Summons on 4 March 2021 seeking leave to commence judicial review proceedings against the Board of Management, St Patricks Naitiri, Boys High School.
2. The Court directed him to serve the Summons ahead of directions on 3 May 2021.
3. When the application was called out on 3 May 2021, the *ex-parte* applicant was absent. There was no evidence that he had served the Summons.
4. The Court directed that a Notice to Show Cause be issued with a return date of 3 June 2021.
5. On the return date, the *ex-parte* applicant was absent again.
6. The advocate for the Respondent applied that the Summons be dismissed and the Court dismissed it.
7. On 9 June 2021, the *ex-parte* applicant filed a Motion seeking an order restoring the dismissed Summons on the ground that the advocate on record had challenges logging into the virtual Court.
8. The Court directed the *ex-parte* applicant to serve the Motion and when parties appeared on 17 June 2021, the Court directed that responses and affidavits be exchanged.
9. The Respondent filed Grounds of Opposition on a date which is not clear from the record and the *ex-parte* applicant filed submissions on 16 August 2021.

10. The Court has considered the Motion, Grounds of Opposition and submissions and come to the view that the Motion should be dismissed.

11. First, the *ex-parte* applicant has not explained the failure to attend the Court on 3 May 2021.

12. Second, the *ex-parte* applicant was employed as a bursar by the Respondent in 2001. He was suspended on half salary in 2014 and in 2020, the half salary was withdrawn.

13. According to the *ex-parte* applicant, the withdrawal of the half salary amounted to dismissal.

14. In the Court's view, the anchor to the *ex-parte* applicant's action is breach of contract and unfair termination of employment.

15. In terms of practice and procedure, and the Rules of this Court, the mode of approaching the Court is through a Memorandum of Claim or Statement of Claim and not through judicial review proceedings.

16. Restoring the dismissed Summons would be an exercise in futility as it is not probable that the threshold for grant of leave to commence judicial review proceedings would be met.

17. The Motion is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 15<sup>TH</sup> DAY OF DECEMBER 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For ex-parte applicant A.W. Kitiyu & Co. Advocates

For Respondents Office of the Attorney General

Court Assistant Chrispo Aura