



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**ELRC PETITON NO. 29 OF 2018( as consolidated with No. 11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28 and 36 of 2018.**

*(Before Hon. Justice Mathews N. Nduma)*

**ROTICH SYLVESTER KIPRONO.....PETITIONER**

**VERSUS**

**NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT**

**RULING**

1. Serving before court is an application to review and set aside the judgment dated and delivered on the 7<sup>th</sup> March 2019 by the applicant, Rotich Sylvester Kiprono who was the petitioner in petition No. 29 of 2018, which was consolidated with 19 other petitions and heard and determined together in the impugned judgment.
2. The application is brought in terms of Rule 33 of the E&LRC (Procedure) Rules 2016 which reads:
  - 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 evidence 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”
3. The application is based on the following grounds set out on the face of the application:
  - a. That there exist new and important facts which the court ought to have considered at the time of judgment.
  - b. That while this petition was pending in court, there were negotiations that were on going between the respondent and the petitioner.
  - c. That the respondent failed to fulfil their part of the bargain.
  - d. That the petitioner has been and is still in the payroll and his name has never been removed from the pay roll for the reason that the parties were likely to agree.
  - e. That the petitioner has not preferred any appeal against the said judgment.
4. The above reasons are further advanced in the supporting affidavit for the court to review and set aside its judgment that the respondent had during the pendency of the petition engaged the petitioner in negotiations with a view to compromise the petition and that the respondent has not removed the name of the petitioner from its payroll and that there was hope that the matter would be settled. That the applicant has not filed any appeal against the judgment of the court.
5. The reasons advanced by the applicant do not constitute valid grounds to review and set aside the judgment of the court in terms of rule 33 cited above.

6. The application is clearly misconceived and lacks merit.

7. The application is dismissed with no order as to costs.

**Ruling Dated, Signed and delivered this 16<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due 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**

Mr. Mogere for Petitioner/Applicant

M/S Opio for Respondent

Chrispo – Court Clerk