



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION 127 OF 2018

(Before Hon. Lady Justice Hellen S. Wasilwa on 18th September 2019)

ABDULAHI MOHAMMED OMAR.....PETITIONER

VERSUS

ENERGY REGULATORY COMMISSION.....RESPONDENT/APPLICANT

RULING

1. Pending for determination before me are two Applications. The first Application is filed by the firm of Okweh Achando & Company Advocates on 28th November, 2018 on behalf of the Petitioner herein. The second Application on the other hand is filed by their counterparts Ogetto Otachi & Company Advocates on record for the Respondent on 23rd January, 2019.

2. The first Application was filed under a Certificate of Urgency through a Notice of Motion filed Under Articles 20,22, 23(3), 32,33, 35, 41(1), 47, 50 (1) and 236 of the Constitution of Kenya 2010; Sections 5, 41, 45,46 (g), 49 and 50 of the Employment Act, 2007; Sections 3,12 (1) (a), (2) & (3) and 20 (1) of the Employment and Labour Relations Court Act Cap 234B Laws of Kenya and Rule 17 of the Employment and Labour Relations Court (Procedure) Rules 2010.

3. The Application seeks the following Orders:-

1. ***THAT*** this Application be certified as urgent, service be dispensed with and the same be heard ex parte in the first instance (Spent)

2. ***THAT*** pending the hearing and determination of this Application, this Honourable court be pleased to issue a Conservatory Order staying and or setting aside the Respondent's decision as contained in the letter dated 8th November 2018 summarily dismissing the Applicant from his employment as the Senior Surveillance and Enforcement Officer.

3. ***THAT*** pending the hearing and determination of this Application, this Honourable court be pleased to grant a Conservatory Order restraining and prohibiting the Respondent whether by itself, servants, agents, officers, Directors, representatives or any of them from otherwise doing the following acts, or any of the acts, that is to say; employing and or replacing of labour to perform the same or similar works as the Applicant in his former employment of the Respondent, hiring on inferior or superior terms and or similar terms any employee with comparable qualifications to replace the Applicant.

4. ***THAT*** pending the hearing and determination of this Application, this Honourable court be pleased to grant a Conservatory Order restraining and prohibiting the Respondent whether by itself, servants, agents, officers, Directors, representatives or any of them from converting the interest rate from the present rate of 3% per annum to commercial rates on the mortgage facility granted by the Respondent to the Applicant under the terms of its Cash Backed Scheme.

5. ***THAT*** pending the hearing and determination of this Application, the Claimant does continue paying the same rate of monthly instalment inclusive of the rate of interest at 3% per annum.

6. ***THAT*** this Honourable court be pleased to issue a Conservatory Order directing and or compelling the Respondent to produce the following information which will assist the court to make a fair determination of this matter: -

i. The Human Resource Advisory Committee (HRAC) investigations report on the Applicant's conduct;

- ii. *The CCTV footage on the 2nd Floor of the Respondent's Head Office for 7th & 10th September 2018;*
- iii. *The CCTV footage on the 1st, 2nd and 3rd Floors of the Respondent's Head Office for 11th September 2018;*
- iv. *The Respondent's Biometric Login Register (data) for 11th September 2018;*
- v. *All and any other evidence and or information relied on by the Respondent when making its decision to summarily dismiss the Applicant.*

UPON INTER PARTIES HEARING

7. **THAT** pending the hearing and determination of the Petition herein, an Order be and is hereby issued to the Respondent directing it to reinstate with full back salary and allowances and continuity of service of the Applicant whose services have been arbitrarily and or unlawfully terminated or in the alternative full pay and or adequate amount of compensation be paid in order to meet justice to the Applicant.

8. **THAT** pending the hearing and determination of the Petition herein, this Honourable court be pleased to grant a Conservatory Order restraining and prohibiting the Respondent whether by itself, servants, agents, officers, Directors, representatives or any of them from otherwise doing the following acts, or any of the acts, that is to say from employing and or replacing of labour to perform the same or similar works as the Applicant in his former employment of the Respondent, hiring on inferior or superior terms and or similar terms any employee with comparable qualifications to replace the Applicant.

9. **THAT** pending the hearing and determination of the Petition herein, this Honourable court be pleased to grant a Conservatory Order restraining and prohibiting the Respondent whether by itself, servants, agents, officers, directors, representatives or any of them from converting the interest rate from the present rate of 3% per annum to commercial rates on the mortgage facility granted by the Respondent to the Applicant under the terms of its Cash Backed Scheme.

10. **THAT** pending the hearing and determination of the Petition herein, the Claimant does continue paying the same rate of monthly instalment inclusive of the rate of interest at 3% per annum.

11. **THAT** this Honourable court be pleased to make a declaration that the action of the Respondent is inoperative, unlawful, a nullity, and or void ab initio.

12. **THAT** the Conservatory Orders issued under 2, 3, 4 and 5 above to remain in force until the hearing and determination of the Petition or until further orders of the Court.

13. **THAT** the Respondent be condemned to pay the costs of this Application.

4. This Application is premised on the grounds **THAT**:-

a) On 8th November 2018 the Applicant was summarily dismissed by the Respondent as its Senior Surveillance and Enforcement Officer. This was after the Applicant was found guilty of all charges contained in the show cause letter dated 2nd October 2018.

b) The Respondent's decision to dismiss the Applicant is unlawful, a breach of due process and the rules of natural justice and contrary to and in violation of the provisions of Articles 20, 27, 32, 33, 35, 41, 47, 50 and 236 of the Constitution of Kenya, Section 46 (g) and (h) of the Employment Act 2007 and the Respondent's Human Resource Policy and Procedures Manual (May 2018). If this decision is allowed to stand it will be tantamount to unfair labour practice and prejudicial to the interests of the Applicant.

c) On 17th September 2018 the Applicant was interdicted by the Respondent to allow for investigations to be conducted over the alleged use of abusive language, behaving in inappropriate manner and insubordination that occurred on 3rd August 2018 and 11th September 2018. Subsequently, the Applicant was issued with a show cause letter dated 2nd October 2018.

d) The Applicant responded to the show cause letter on 9th October 2018 and by the Respondent's letter dated 11th October 2018 he was invited to a disciplinary hearing before the Human Resource Advisory Committee (HRAC) on 19th October 2018.

e) On 12th October 2018 the Applicant requested for the following information to aid in preparation of his defence:

- i. *Report of the HRAC investigations on his conduct referred to in the show cause letter to him dated 2nd October 2018;*
- ii. *CCTV footage on 2nd floor on 7th & 10th September 2018;*
- iii. *CCTV footage on 1st, 2nd, 3rd floors on 11th September 2018;*
- iv. *Mobile phone (video) clip by his accuser;*
- v. *Any other material and evidence relied upon in drawing the conclusion that he misconducted himself as alleged in the*

show cause letter.

f) By its letter dated 15th October 2018 the Respondent denied the Applicant this information stating among others that the said information will not be relevant to the Applicant.

g) The entire disciplinary process was commenced after the Applicant complained of myriad of threats, discriminatory and unfair labour practices meted against him by his Supervisor and the Respondent's Director General.

h) The action of the Respondent amounts to unlawful, unilateral and subjective decision bordering on abuse of office and would be a violation of the Applicant's fundamental rights under the Constitution and breach of the Respondent's statutory duty owed to the Applicant.

i) On 18th July 2018 the Applicant entered into a mortgage facility, under the Respondent's Cash Backed Scheme, with Kenya Commercial Bank Limited (KCB) for the financing and purchase of property title No. Kajiado/Kitengela/39864 which attracts interests at the rate of 3% per annum.

j) The interest rate of 3% per annum is conditional on the continuity of the Applicant's employment with the Respondent. On termination of employment the interest rate applicable shall be the commercial rate chargeable by the Bank. This commercial rate cannot be sustained by the Applicant hence the need to grant the orders sought herein.

k) Unless this Application is heard as a matter of urgency and the Respondent's decision to dismiss the Applicant nullified, its further discriminatory practices, intimidation, harassment restrained and or prohibited, the Applicant is condemned to suffer irreparable loss, injury and devastating wanton economic damage and this Petition will be rendered nugatory to the increasing prejudice of the Applicant.

l) It is in the interest of justice that the orders sought are granted.

5. The Application is supported by the Affidavit of **ABDULAHI MOHAMMED OMAR** sworn on 28th November, 2018 in which he reiterates the averments made in the Notice of Motion Application.

6. The matter subsequently came up for hearing of the Application on 30th November, 2018 for the hearing of this Application where the Honourable Justice Byram Ongaya who granted the following Orders:-

1. THAT the Application is certified urgent to be served today for inter partes hearing or further orders and directions on 5/12/2018 at 9.00 o'clock in the forenoon or soon thereafter.

2. THAT pending the inter partes hearing or further orders by the Court, Orders are made as follows:

a) The Respondent to deliver to the Petitioner all documented material relied upon leading to the Petitioner's summary dismissal not being limited to but including the CCTV footage, investigation reports, minutes of the disciplinary hearings and all relevant material in that regard.

b) The Respondent by itself, its agents or employees is hereby restrained or prohibited from advertising the vacancy, recruiting, appointing another person to the vacancy of Senior Surveillance and Enforcement Officer being a vacancy flowing from the Petitioner's summary dismissal.

c) The Petitioner to continue repaying the loan on the mortgage facility at the interest rate of 3% per annum.

3. THAT today's costs in the cause.

7. It is from these Orders that the Respondent filed the second Application by way of Notice of Motion dated 23rd January, 2019 and filed in Court on 25th January, 2019.

8. The Application is brought under Articles 48 and 50 (1) of the Constitution of Kenya, 2010, Rule 25 of the Constitution of Kenya Protection of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013, order 10 Rule 11 of the Civil procedure Rules, 2010, Rule 17 (3) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and all other enabling provisions of the Law.

9. The Application seeks for the following Orders **THAT:-**

1. The Honourable Court be pleased to review, set aside and/or vary the ex parte Orders issued on 30th November, 2018.

2. Any Orders purporting to extend the ex parte orders issued on 30th November, 2018 be set aside pending determination of the Petition.

3. The Respondent be at liberty to apply for further orders or directions as this Honourable Court may deem fit to grant.

4. *The costs of this Application be provided for.*

10. The Application is premised on the following grounds:-

1. ***THAT*** *this Honourable Court did on 30th November, 2018, issue substantive ex parte orders that:-*

a) *The Respondent to deliver to the Petitioner all documented material relied upon leading to the Petitioner's summary dismissal not being limited to but including the CCTV footage, investigation reports, minutes of the disciplinary hearings and all relevant material in that regard.*

b) *The Respondent by itself, its agents or employees is hereby restrained or prohibited from advertising the vacancy, recruiting, appointing another person to the vacancy of Senior Surveillance and Enforcement Officer being a vacancy flowing from the Petitioner's summary dismissal.*

c) *The Petitioner to continue repaying the loan on the mortgage facility at the interest rate of 3% per annum.*

2. ***THAT*** *these Orders were issued on the basis of material non disclosure and misrepresentation of facts by the Petitioner.*

3. ***THAT*** *the Petitioner was not servicing any mortgage facility at the time of his summary dismissal for gross misconduct.*

4. ***THAT*** *there was no CCTV cameras within the offices where the Petitioner miscondacted himself*

5. ***THAT*** *the Respondent undertakes crucial public functions in this Company and the ex-parte orders of injunction will cripple its constitutional obligation to devolve services to the common mwananchi.*

6. ***THAT*** *it is trite law that harm shall not be caused to the nation where the nature of the injury which would or might be done to the nation is of so grave a character that no other interest public or private, can be allowed to prevail over it.*

7. ***THAT*** *it is trite principle that all things are presumed to have been legitimately done, until the contrary is proved (omni praesumuntur legitime facta donec probetur in contrarium)*

8. ***THAT*** *it is therefore fair and just that the orders be vacated as the Petitioner is abusing the Court process.*

11. The Application is further supported by the Respondent Affidavit sworn by **EUNICE AYODO**, the Respondent's Principal Human Resource Officer on 23rd January, 2019. In which she reiterates the averments made on the face of the Notice of Motion Application filed therein in opposition to the Petitioner's Application dated 28th November, 2018.

12. The Petitioner opposed the said Application vide his Replying Affidavit sworn by **ABDULAHI MOHAMMED OMAR** on 29th April, 2019 in which he avers that the said Application is mala fide, is misconceived, incompetent, vexatious, frivolous, an abuse to the Court process, is brought in bad faith and that the same ought to be dismissed with costs to the Petitioner.

13. The Petitioner further contends that the said Application does not meet the threshold for varying, setting aside or staying the Orders issued by the Honourable Court on 28th November, 2018 and thus the Applicant has no cause of action. He further avers that the deponent of the Affidavit is not qualified to swear the same as Principal Human Resource Officer having not qualified and trained as such. The Petitioner contends that the deponent is occupying the said position illegally.

14. The Petitioner avers that the Respondent/Applicant has failed to demonstrate in his Affidavit or Notice of Motion Application how his Application fails to meet the threshold for a constitutional petition. He further avers that the Orders granted on 28th November, 2018 were rightfully issued and that the same are in order.

15. The Petitioner contends that the Applicant has not shown what prejudice it is going to suffer if the Court fails to grant it the orders it seeks in its Application.

16. The Petitioner filed a Further Affidavit sworn by himself (**ABDULAHI MOHAMMED OMAR**) on 29th April, 2019, in which he reiterates the averments made in his Application dated 28th November, 2018 and the Replying Affidavit on record.

17. The Respondent/Applicant filed a further affidavit sworn by **EUNICE AYODO** in which she contends that she is duly competent to swear the Affidavit on behalf of the Respondent herein by virtue of the fact that she is duly registered with the Institute of Human Resource Management with a membership number of 007424 and holding a valid practicing certificate for the year 2019 (Number 4010) issued by IHRM.

18. She further contends that the Respondent's Application to set aside and/or vary the Orders of 28/11/2018 are justified and that the same ought to be allowed as prayed since the same were granted on the basis of material misrepresentation and as such a good candidate for setting aside.

19. The Respondent further contends that the Petitioner through his own admission was advanced the mortgage facility from KCB on 24th

December, 2018 after the Court order of 28th November, 2018 was served on the Bank proving that the Petitioner obtained the Orders of 28th November, 2018 after misrepresenting facts to the Court thus prompting the Application to set aside or vary the Orders.

20. The Respondent reiterates that the disciplinary process against the Petitioner herein was fair and his subsequent dismissal lawful.

21. In conclusion, the Respondent urged this Honourable Court to allow its Application and proceed to set aside and/or vary the orders of 28th November, 2018.

22. The Respondent filed a supplementary Affidavit deposed by one **EUNICE AYODO** in which she objects to the manner in which documents have been placed before this Honourable Court citing that the same are illegally obtained and are outside the provisions of the Evidence Act.

23. She further averred that the Respondent would at the appropriate moment raise objections to their production. As a result of which the Respondent contends that the Petitioner's Further Affidavit is incompetent and fatally defective and ought to be struck out.

24. The Parties thereafter agreed to canvass both Applications by way of written submissions.

Submissions by the Parties

25. The Petitioner submitted that he has established a prima facie case with high chances of success and that he stands to suffer irreparable harm if the Orders sought in his Application dated 28th November, 2018 are not granted in their entirety. He relied on the Court decision in the case of **Giella Vs Cassman Brown & Co (1973) EA 358**. The Petitioner further cited the following Authorities to fortify his argument **Moses C. Muhia Njoroge & 2 Others Vs Jane W. Lesaloi & 5 Others (2014) eKLR** and the Court of Appeal decision in the case of **Mrao Ltd Vs. First American Bank of Kenya and 2 Others (2003) KLR 125**.

26. The Petitioner further contends that the conservatory order that he seeks are enshrined in the Constitution of Kenya. To fortify this argument the Petitioner relied on the case of **Judicial Service Commission Vs Speaker of the National Assembly & Another (2013) eKLR**.

27. The Petitioner further contended that his case has passed the test for granting conservatory orders as set out in the case of **Centre for Rights Education and Awareness (CREAW) & 7 Others Vs Attorney General (2011) eKLR** and **Muslims for Human Rights (Muhuri) and 2 Others vs Attorney General and 2 others (2011) eKLR**.

28. The Petitioner contends that conservatory orders are discretionary however while exercising its discretion the Court ought to be guided by the decision in **Gatirau Peter Munya Vs Dickson Mwenda Kithinji & 2 Others (2014) eKLR**. The Petitioner urged the Court to allow his application as prayed.

29. The petitioner submitted that the Respondent has not demonstrated any prejudice it will suffer if the Orders sought are not granted. To fortify this argument the Petitioner cited the Authority of **Suleiman Vs Amboseli Limited (2004) Eklr**.

30. The Petitioner further submitted that he has proved his case and that the Court ought to reinstate him pending hearing and determination of the Petition. The relied on the provisions of Section 49 of the Employment Act and the case of **Amir Suleiman Vs Amboseli Limited** (stated above).

31. In conclusion, the Petitioner urged this Honourable to allow its Application dated 28th November, 2018.

32. In respect of the Application dated 23rd January, 2019, the Petitioner submitted that the same ought to be dismissed with costs. The Petitioner further contends that he has established that he is likely to suffer irreparable loss if the Orders granted vacating the Orders of 28th November, 2018.

33. The Petitioner further submitted that the Respondent has failed to avail evidence of non-disclosure of fact and Misrepresentation of facts as pleaded in its Application dated 23rd January, 2019. To fortify this argument the Petitioner cited and relied on several authorities including **Gotv Kenya Limited Vs Royal Media Services Limited & 2 others (2015) eKLR**, **Aviation & Airport Services Workers Union (K) Vs Kenya Airport Authority (2014) eKLR**, **Naim Bilal Yaseen Vs Judicial Service Commission (2017) eKLR** and **Captain Jorim owino Nyamor and Captain Abdi Ali Hersi Idle Vs Kenya Airways Limited, Cause Number 1621 of 2016**.

34. The Petitioner further contends that he has rightfully approached this Court by way of Petition as this Court is a court of competent Jurisdiction as envisaged in the Constitution of Kenya, 2010 (Article 162(2)) and the Employment and Labour Relations Court Act (2011). To fortify this argument the Petitioner cited the cases of **Motor Vessel Lillian S. Vs Caltex Oil Kenya Limited (1989)** and **United States International University (USIU) Vs Attorney General (2012) eKLR**.

35. The Petitioner further submitted that having shown that this Court is a Court of competent jurisdiction his matter meets the threshold for a Constitutional Petition as enumerated in the **Anarita Karimi Njeru Vs Republic (1979) eKLR and Meme Vs Republic & Another (2004) Eklr**.

36. In conclusion, the Petitioner urged this Court to dismiss the Application dated 23rd January, 2019.

37. On the other hand the Respondent submitted that the Court proceeds to allow its Application dated 23rd January, 2019 as the Petitioner mislead this Honourable Court into granting him ex parte orders issued on 28th November, 2018.
38. The Respondent further contends that the Claimant is guilty of non-disclosure of material facts and as such the orders issued ought to be set aside. To fortify its argument the Respondent relied on the Court's decision in the case of **Owner of the Motor Vessel "Lillian S" Vs Caltex Oil (Kenya) Ltd (1989) KLR.**
39. The Respondent further submitted that the Petitioner admits in his pleadings that the mortgage facility at KCB was not given to him at the time he (the Petitioner) approached this Honourable Court.
40. It is further submitted that the Petitioner failed to disclose to the Bank the fact that he had left the Respondent pursuant to summary dismissal making the orders obtained on 28th November, 2018 a good candidate for reviewing and/or varying the orders. To fortify this argument the Respondent relied on the Court's findings in the case of **Okiya Omtatah Okoiti Vs Joseph Kinyua & 2 Others (2018) eKLR** which gave the threshold to be considered by the Courts while setting aside, varying and/or reviewing Court Orders.
41. The Respondent further contends that the Petitioner has not proved his case for granting of interlocutory orders as sought in his Application dated 28th November, 2018. To fortify this argument the Respondent relied on the cases of **Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others (2003) eKLR**, **Loice Mutai Vs Kenya Revenue Authority (2017) eKLR**, **Nguruman Limited Vs Jan Bonde Nielsen & 2 Others (2014) eKLR** and **Jeff Milton O. Odongo Vs Kenya Ports Authority (2016) eKLR**.
42. The Respondent further submitted that the Petitioner has failed to prove his case as to why the order of reinstatement ought to be issued. The Respondent relied on the Court's decision in the case of **Kenya Tea Growers Association & Another Vs Kenya Plantation and Agricultural Workers Union (2018) eKLR** *where the Court of Appeal settled the position of reinstatement by stating that the relief is discretionary and before a court can give such remedy, it has to take into account the factors stipulated in Section 49 (4) of the Act which includes the circumstances in which the termination took place including the extent, if any, to which the employee's conduct caused or contributed to the termination; the practicability of reinstatement and the principle that there should be no order of specific performance in a contract of service except in exceptional circumstances.*
43. The Respondent further contended that the Petitioner has failed to show his circumstances are special to warrant the grant of the order of reinstatement. The Respondent further relied on the cases **Loice Mutai Vs Kenya Revenue Authority (2017) eKLR** and **Dorothy Ndavi Vs Board of Management of Kenya High School & 3 Others (2014) eKLR** for emphasis.
44. It is the Respondent's submission that the Petitioner's request to be furnished with all documents used leading to his summary dismissal amounts to him seeking to re-enact the disciplinary process, which is not tenable in law. For emphasis the Respondent cited and relied on the Court's findings in the cases of **Evans Kamadi Misango Vs Barclays Bank of Kenya Limited (2015) eKLR** and **Stephen Amolo Amolo Vs African Medical & Research Foundation (2016) Eklr.**
45. In conclusion, the Respondent submitted that an interlocutory injunction is a discretionary equitable remedy and that the same will not be granted where it is shown that the applicant's conduct does not meet the approval of a court of equity as highlighted in the Court of Appeal decision of **Tende Drive Villas Limited Vs David Kamau & 4 Others (2005) eKLR.**
46. The Respondent submitted that the Petitioner is not deserving of the equitable relief of injunction due to material non- disclosure of fact and that he knowingly mislead this Honourable Court.
47. The Respondent urged this Honourable Court to allow its Application dated 23rd January, 2019 and set aside the Ex-parte Orders of 28th November, 2018 and that the court proceeds to dismiss the petitioner's Application dated 28th November, 2018 with costs to the Respondent.
48. I have examined the averments of both Parties herein concerning the two applications before me. The 1st application seeking stay of orders by the Respondent dismissing the Petitioner from employment and secondly from employing anyone to replace the Petitioner.
49. Orders also sought include not charging interest rates for the mortgage from 3% to commercial rates. Last order sought is to compel Respondent to issue some documents and CCTV footage that would enable the Petitioner to prosecute his case.
50. Upon hearing this application interpartes, Hon. J. Ongaya granted some orders, which include not filling up vacancy of position occupied by the Petitioner, not changing the mortgage interest rate from 3% to commercial rate and provision of documents and CCTV footage as sought by the Petitioner.
51. The Respondent seeks review of the above orders and state that the Court granted these orders without material non-disclosure by the Petitioner/Applicant and that these orders are substantive in nature.
52. The Respondents also aver that they will be crippled if they are unable to fill up the vacancy left by the Petitioner.
53. The Applicant sought to have orders granted confirmed in their entirety and submitted that they have established a prima facie case to warrant issuance of orders sought. They cited **Giella vs Casman Brown & Company (1973) EA 358** and contend that orders sought are enshrined in the Constitution.
54. The Petitioner also submitted that he ought to be reinstated to work pending hearing and determination of this Petition. The Applicant urged Court to dismiss the Respondent's application.

55. The Respondent on the other hand urged Court not to grant Petitioner orders sought and to allow its application.

56. In granting interim orders to stop Respondent from filling the vacancy left by the Petitioner, Hon. J. Ongaya was in my view properly guided by the law in that the Applicant/Petitioner was able to demonstrate on the face of it that he has a case capable of being determined by this Court with a likelihood of success.

57. He also indicated to Court that he has a mortgage facility he is servicing at 3% interest. If this is not the position, the Respondent stand to suffer no harm at all.

58. On issuance of certain documents and CCTV footage, the Applicant had sought their issuance even before the disciplinary hearing and all the Respondent averred was that, that was not necessary. There was no communication that the documents and CCTV footage was not available. It is therefore an afterthought for Respondent to aver that these are not available.

59. The Respondent want the orders above reviewed. For this Court to review its orders Rule 33(1) of the ELRC (Procedure) Rules 2016 provide as follows:-

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

60. In the instant case, the Respondent have not been able to prove any of the grounds available to warrant review.

61. It is therefore my finding that the application for review cannot stand and is hereby dismissed.

62. As for the Applicant/Petitioner's application, the orders already granted by Hon. J. Ongaya are confirmed. The order for reinstatement will be considered in the main Petition.

63. Costs of both applications to be in the cause.

Dated and delivered in open Court this **18th day of September, 2019.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Okweh Achiando for Petitioner

Ogare for Respondent