



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA**

**AT NYERI**

**CAUSE NO.98 OF 2013**

**(Formerly Cause No.524 of 2011 at Nairobi)**

**WILSON W. KABUTA.....CLAIMANT**

**-VERSUS-**

**B.O.G KABARE GIRLS HIGH SCHOOL.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> December, 2014)

**RULING**

The court delivered the judgment in this suit on 5.06.2014. The claimant subsequently filed the Notice of Motion on 24.07.2014 and brought under Order 45(1) and (2) of the Civil Procedure Rules praying for review and setting aside of the judgment given on 5.06.2014. The claimant urged that there was new and important evidence which was not readily available to the claimant at the hearing and that no prejudice shall be suffered by the respondent if the orders sought are granted. The application was supported by the annexed affidavit of Wilson W. Kubuta, the claimant as sworn on 23.07.2014.

The claimant's case is that at the hearing of the suit, he did not have the certificates showing his credentials and academic qualifications but which he now filed in court as annexed on the supporting affidavit to show that he satisfied the Civil Service qualifications and therefore deserved the terms and conditions of service applicable in the Civil Service.

The respondent filed the replying affidavit by Jacinta W. Ndambiri, its Principal, to oppose the application. The respondent's case was that subsequent to the judgment it had paid the claimant the sum of Kshs. 94,570.00 in satisfaction of the judgment sum by cheque of 11.07.2014. Further, the claimant had only availed the academic certificates and not professional certificates and the certificates filed in court were academic and not professional certificates. The respondent further urged that there had been inordinate and unexplained delay in bringing the application which was filed and served on 24.07.2014.

The court has considered the parties' respective submissions and finds that the claimant has failed to show that with due diligence, the certificates now filed and relied upon as new or fresh evidence, could not have been made available at the hearing of the suit. Further, the court finds that the application was filed after inordinate delay and particularly after the respondent had satisfied the judgment with the

claimant's unconditional acceptance of that satisfaction. The court holds that without a reasonable and lawful cause, an application for review of a judgment or order or decree which has already been satisfied between the parties would be prejudicial to the party who has so satisfied the court's decision and put the matter to rest; and indeed, the court holds that such application for review, like in the instant case, is belated and must not be entertained.

One more impetus for dismissing the present application is that there were no consequential orders prayed for such as rehearing if the review and setting aside were allowed. Thus, in the opinion of the court, allowing the application as framed without setting aside the proceedings at the hearing or orders for fresh hearing would serve no purpose and the court finds that the application was misconceived.

In conclusion, the notice of motion for review and setting aside is dismissed with costs.

**Signed, dated and delivered in court at Nyeri this Friday, 19<sup>th</sup> December, 2014.**

**BYRAM ONGAYA**

**JUDGE**



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