



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.32 OF 2013

(Before D.K.N.Marete)

SIMON GIKUNGU KARIUKI.....CLAIMANT/APPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

RULING

This is an application dated 28th April, 2021 and comes out thus;

1. *That the court do review the orders made on theday of2019 pursuant to the Application dated 1st April, 2019.*
2. *That upon reviewing the Orders the court do here the application dated 12th April, 2018.*
3. *That costs abide the outcome of the Application dated 12th April, 2018.*

It is grounded as follows;

- a) *The Public Service Commission failed to act contrary to the Orders issued by the Judge on 31st July, 2015.*
- b) *The letter sent was never received.*

The Respondent in a Replying Affidavit sworn on 19th July 2021 denies and rubbishes the application.

It is the Respondent's case that this is an application for review based on the ground that all this time, the Public Service Commission failed to act on this court's orders issued on 31st July, 2015 in that the letter sent never reached the applicant.

The Respondents further case is that the commission become aware of the judgment in July, 2018 and immediately requested for the applicants personal file which was received on 17th July, 2018, seven days down the line.

Her further case is as follows;

- The personal file as forwarded did not contain the explanation required and she called for the confidential file which was received on 16th January, 2019.
- The letter of dismissal to the applicant was forwarded through the postal address on the confidential file but ended up being returned as undelivered.
- That this was the address forwarded by the applicant who had the duty of updating the same at all times.
- Due diligence was observed in the sending of the letter.
- Hearing the application dated 12th April, 2018 would be an exercise in futility the matter having been determined and the applicant found culpable and who failed to make the necessary disclosures hence the dismissal for gross misconduct.
- That seeking reinstatement after gross misconduct would lead to go contrary to public interest.
- That this application is vexatious and a drawback to expeditious administration of justice through prolonging and endless pursuit of frivolous matters.
- It should be disregarded.
- It is not meritorious and is an abuse of the process of court, and indeed frivolous.

This application tilts in favour of the Respondent's case, she has ably explained and submitted on a diligent cause of action in the making and delivery of the letter of dismissal of the applicant.

The application to re-open a matter seven years down judgment would require very compelling grounds on the part of the applicant. This is not the case herein. The applicant has nothing outstanding in support of the application. This is more so bearing the delicate nature, intent and import of the application. The submission of the letter as undelivered is not convincing. It is indeed suspect.

Let this matter die, or do I say rest.

I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Applicant in person.
2. Mr.Muthuri instructed by State Law Office for the Respondent.



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