



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO.31 OF 2018

(Formerly Nyeri ELRC Cause No.43 of 2014)

(Before D.K.N.Marete)

JOSECK MUTHURI MWARANIA.....CLAIMANT/APPLICANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

This is an application dated 12th March, 2021 and comes out thus;

1. *THAT this application be certified as urgent.*
2. *THAT this Honourable Court be pleased to extend time and allow the Applicant to give Notice of Appeal out of time against the Ruling dated and delivered on 18th day of November 2021 by Hon.Nzioki wa Makau, Judge.*
3. *THAT the costs of this Application be provided for.*

It is grounded as follows;

- a) *The claimant is aggrieved by the whole of the decision of the Honourable court in the Judgment dated and delivered on 18th day of November 2021 by Hon.Nzioka wa Makau Judge.*
- b) *The applicant's advocate was not on record and had to check whether there is an appeal in the matter from the then advocate acting for the claimant and the court.*
- c) *We found out that there is no appeal.*
- d) *The claimant wishes to appeal against the said ruling but he is out of time.*
- e) *The Applicant has an arguable appeal with high chances of success.*

f) The decision is against the provision of the constitution and case law.

The Respondent opposes the application on the following grounds;

3. THAT litigation in this matter commenced 16 years ago when the Applicant filed a plaint at the High Court in Nyeri on 2/12/2004. Judgment was finally delivered in the matter on 17/1/2019. Annexed hereto and marked as CA-1 is a copy of the Judgment.

4. THAT on 8/4/2019, the Applicant filed an Application for Review of Judgment dated 28/3/2019.

5. In response thereof, I filed Grounds of opposition dated 23/4/2019 in opposition to the Application. Annexed hereto and marked as CA-2 is a copy of the Application and Grounds of Opposition.

6. THAT on 4/10/2019, the court dismissed the Applicant's Review Application for lack of merit. Annexed hereto and marked as CA-3 is a copy of the court's ruling dated 4/10/2019.

7. THAT on 16/10/2019, the Applicant filed a Notice of Appeal against the said Ruling.

8. Pursuant to Rule 79 of the Court of Appeal Rules, I filed and served the Applicant with Notice of Address for Service. Annexed hereto and marked as CA-4 is a copy of the Notice of Appeal and Notice of address for service.

9. That shockingly instead of pursuing the Appeal, on 4/8/2020, the Applicant filed a second Application for Review. Annexed hereto and marked as CA-5 is a copy of the second Application for Review.

10. In response thereto, I filed Grounds of Opposition dated 14/9/2020 contesting the validity of the second Review Application. Annexed hereto and marked as CA-6 is a copy the Respondent's Grounds of Opposition.

11. That I am aware that the Honourable Court rendered it's Ruling on the matter and dismissed the 2nd Review Application on 18/11/2020.

12. Applicant failed to file the Notice of Appeal within the requisite statutory period of 14 days hence the instant Application. In dismissing the Application the court held;

a) That the Applicant was abusing the process of court;

b) That the Applicant has become a vexatious litigant.

The Applicant in a Supplementary Affidavit sworn on 7th May, 2021 reiterates his case and pleads his innocence in so far as the conduct of his appeal is concerned. It is his case that his former advocate had filed a notice of appeal and in any event, all this does not deprive him of his rights under order 45 rule 1 of the Civil Procedure Rules on applications for review.

The Respondents case overwhelms that of the Applicant. She has ably demonstrated lethargy and idling in the conduct of the Applicant in pursuit of his appeal.

She has also demonstrated that this applications comes in the midst of a matter that was filed in court on 2nd December, 2004. This is well over seventeen (17) years down the line. It is trite law and practice that litigation must come to an end. This, coupled with laxity of the Applicant in bringing out his appeal renders the application rudderless. It is not appealing.

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

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

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Anyuar instructed by Cavin Anyuar & Company Advocates for the Respondent.
2. Miss Rimita instructed by Maitai Rimita & Company Advocates for the Claimant



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