



Case Number:	Petition 16 of 2020
Date Delivered:	28 Apr 2022
Case Class:	Civil
Court:	Employment and Labour Relations Court at Nairobi
Case Action:	Ruling
Judge:	James Rika
Citation:	Kelvin Gatembo Kariuki & 4 others v Office of Auditor-General & 2 others [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Employment and Labour Relations
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petition ordered
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT NAIROBI**

**PETITION NUMBER 16 OF 2020**

**BETWEEN**

**1. KELVIN GATEMBO KARIUKI**

**2. ELIZABETH W. MUTUA**

**3. BRENDA ANINDO**

**4. CATHERINE N. MURIITHI**

**5. SCOLASTICA WAWIRA NJERU.....PETITIONERS**

**VERSUS**

**1. OFFICE OF THE AUDITOR-GENERAL**

**2. THE HON. ATTORNEY- GENERAL**

**3. THE NATIONAL EMPLOYMENT AUTHORITY.....RESPONDENTS**

**RULING**

1. On 11<sup>th</sup> June 2021, the Court delivered Judgment in favour of the Petitioners, finding that they were lawfully employed by the 1<sup>st</sup> Respondent, and that their respective contracts of employment were unlawfully terminated by the 1<sup>st</sup> Respondent.
2. The Court ordered that the 1<sup>st</sup> Respondent pays the Petitioners 7 days' salaries as notice pay, with costs, while the Petition against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was rejected.
3. The 1<sup>st</sup> Respondent has returned to Court with an Application for review, dated 1<sup>st</sup> September 2021, which is founded on the Affidavit of the 1<sup>st</sup> Respondent's Advocate, Mr. Timothy Isaac Oduol Rakwar, sworn on 1<sup>st</sup> September 2021.
4. Primarily, review is sought based on paragraph 10 of the Judgment, which is that there were no Submissions placed in the physical file by the 1<sup>st</sup> Respondent, at the time of preparing the Judgment.
5. The Application is opposed through the Replying Affidavit of the 1<sup>st</sup> Petitioner, sworn on 25<sup>th</sup> October 2021. The Petitioners submit that there is no ground presented by the 1<sup>st</sup> Respondent, to warrant review. The Submissions by the 1<sup>st</sup> Respondent were filed late, without the leave of the Court, and were ripe for striking out.
6. Ruling was scheduled for 6<sup>th</sup> April 2022, which regrettably coincided with the Judges' annual conference.

**The Court Finds:** -

7. There is no error apparent on the face of the record, or discovery of fresh matter of evidence, to justify review of Judgment, under Rule 33 of the Employment and Labour Relations Court [Procedure] Rules, 2016.
8. It is correct that at the time of writing the Judgment, no Submissions by the 1<sup>st</sup> Respondent had been placed in the physical record.
9. The 1<sup>st</sup> Respondent has explained in the Affidavit of its Advocate why this was so.
10. However, it is also correct as pointed out in the Affidavit of the 1<sup>st</sup> Petitioner that those Submissions were filed late, and without the leave of the Court.
11. The position of the 1<sup>st</sup> Respondent was in any event considered in the Judgment, particularly under paragraph 7 and 8. The Affidavit of the 1<sup>st</sup> Respondent's Deputy Director of Human Resources, sworn on 17<sup>th</sup> July 2020, answered the Petition, and was taken into account wholly.
12. Nothing in the Application for review, raises any new matter of evidence, as would affect the Court's finding, that the Petitioners were lawfully employed and their contracts unlawfully terminated, warranting the orders made in the Judgment. Nothing would alter the Court's finding on Sections 9 and 10 of the Employment Act.
13. Failure to place the Submissions of the 1<sup>st</sup> Respondent on the physical file was occasioned by a misunderstanding of the e-filing platform by the staff of the Court, and the 1<sup>st</sup> Respondent. Those Submissions ought to have been available to the Judge at the time of preparing the Judgment, if only for purposes of expunging them from the record, for late and unauthorized filing.
14. Their being unavailable however, did not have any material effect on the Judgment. The factual position of the 1<sup>st</sup> Respondent was well articulated in the Affidavit of its Deputy Director of Human Resources, and was considered by the Court in its Judgment.

IT IS ORDERED: -

- a. The Application by the 1<sup>st</sup> Respondent dated 1<sup>st</sup> September 2021, is declined.*
- b. Costs to the Petitioners.*

**Dated, signed and released to the Parties electronically, under Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, this 28<sup>th</sup> day of April, 2022.**

**JAMES RIKA**

**JUDGE**



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