



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL APPLICATION NO. 241 OF 2018

GREAT BODY GYM LIMITED.....APPLICANT

VERSUS

SHAH & PATEL (INDUSTRIES) LIMITED.....RESPONDENT

RULING

1. The genesis of this matter is the arbitration award delivered by **J.B. Havelock** on **1st October 2017**. **Great Body Gym Limited** applied by an application dated 23rd January 2018 and sought the setting aside of that award.

2. I delivered my judgment on 30th October 2018 dismissing the application. In that judgment I indicated that I had not sighted the written submissions of great body Gym Limited. That provoked the present application under consideration. The application is by Notice of Motion. The application seeks review, variation or setting aside of the judgment on the ground that the court had not considered the submissions of Great Body Gym Ltd's submissions which had been filed before that judgment was delivered.

ANALYSIS

3. I confirm that the submissions of Great Body Gym Ltd, attached to the application under consideration have a court stamp of 29th June 2018 which is a date before the Judgment of the court. Parties, through their learned advocates appeared before me on 12th July 2018. It is clear on that date that the submissions in question were not on court record because this is the order I made on that day:

“Parties have filed their submissions but the applicant (Great Body Gym Ltd) shall supply its copy to the court.”

4. It is obvious that those submissions were not supplied to the court as ordered because when I sat to consider my judgment they were not on the court file. I will not entirely blame Great Body Gym Ltd or its advocate for the absence of these submissions because it has been known for the registry to sometimes fail to place documents filed in the correct file or at all.

5. Great Body Gym Ltd has filed an affidavit in support of the application under consideration. In that affidavit there is no indication at all of what this court may have determined differently had the submissions been availed before judgment was delivered.

6. I have extensively examined the judgment of 30th October 2018. In that judgment the affidavit of the manager of Great Body Gym Ltd, Anthony Thuo Kimani, was considered and reproduced. That affidavit is essentially what is elaborated in the submissions that had not been availed. I am indeed tempted to say, as was stated by the Ashrif Lalji, director of the respondent, that if the present application was allowed it would amount to this court setting aside its judgment to read the submissions and thereafter reach the same conclusion.

7. Indeed that is my determination. There will be no purpose served by setting aside the judgment. This court did consider all the issues in the submissions, which after all were in the affidavit that supported the earlier application for review/setting aside, and this court will not reach any other decision, other than the one of 30th October 2019, even if the submissions are considered.

8. The application dated 3rd December 2018 is without merit and is dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19 pandemic** and in light of the directions issued by **his Lordship, the Chief Justice on 15th March, 2020**, this decision has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

MARY KASANGO

JUDGE