



Pousand v Brandley Ltd & 5 others (Employment and Labour Relations Cause 2465 of 2017) [2024] KEELRC 1745 (KLR) (5 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1745 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2465 OF 2017**

NJ ABUODHA, J

JULY 5, 2024

BETWEEN

THIERRY POUSAND CLAIMANT

AND

BRANDLEY LTD 1ST RESPONDENT

PAUL MUCHENE KINUTHIA 2ND RESPONDENT

GENE GRAND 3RD RESPONDENT

GUERASSIM NIKOLOV 4TH RESPONDENT

PAUL WANDERI NDUNGU 5TH RESPONDENT

RONALD KAMWIKO KARAURI 6TH RESPONDENT

(Before Hon. Justice Abuodha Jorum Nelson)

RULING

1. The Applicants filed application dated 10th April, 2022 under Article 25 (c), 27,48, 50(1) & 159 of *the Constitution* of Kenya, Rules 17,22,26(2), 28(1) (g) of the Employment and Labour Relations Court (Procedure) Rules, 2016 seeking for orders of the court to stay and set aside its Ruling delivered on 24th March, 2022 and all its consequential Orders, in respect of Notice of Motion dated 21st January 2022.
2. The application was supported by the Affidavit of Ronald Kamwiko Karauri the 1st Applicant herein.
3. The Applicants averred that they were dissatisfied with the court’s ruling delivered on 24th March,2022 for the reasons that the Claimant made unsubstantiated claims of fraud against the applicants; a trial within a trial was not conducted to prove or disprove the allegations of fraud which were not proven beyond reasonable doubt and that they were not given opportunity to be heard.



4. The Applicants averred that they had lodged an appeal against the ruling and that the judgment Debtor had lodged an appeal against the judgment of the court, Civil Appeal No. E127 of 2021 which was pending judgment.
5. The Applicants averred that there would be miscarriage of justice if the proceedings herein are not stayed pending the outcome of this application and the intended Appeal.
6. The Applicants averred that it was appropriate that the court stays any further proceedings in this case until their applicant ventilated their grievances before this court. The Applicants further averred that the application was made in good faith and without any intent to delay the determination of this matter and that no prejudice would be suffered by the Respondents if the orders sought were granted.
7. The Claimant filed his response through a Replying Affidavit sworn on 9th November, 2023 and averred that the application was made to delay conclusion of this case and an abuse of Court process for it was an Appeal disguised as an application to set aside the Court's ruling.
8. The Claimant averred that the Applicants were given numerous opportunities to be heard but they chose not to attend court. Further that the Applicants had not filed any appeal to the said application and they had taken over a year to set down the application for hearing.
9. The Claimant further averred that he got a judgment before this court but the Applicants were trying to delay the realization of the same yet it was an old matter. The Claimant therefore prayed for the same application to be dismissed with costs.
10. The Application was dispensed of by written submissions.

Determination

11. The Court has considered the Application as filed. And on the prayer for stay of proceedings notes that the Court gave orders that this application be dispensed with before any other application. The fact that there was no proof from the record that an appeal had been filed meant the Court could not stay proceedings indefinitely. The prayer was therefore overtaken by events.
12. On the question of setting aside, the court has powers to review or set aside its own orders under the law. Section 16 of the [Labour Relations Act](#), 2011 provides as follows;

“The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules”.

13. Further Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides:

(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

(a)



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if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

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(b)

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on account of some mistake or error apparent on the face of the record;

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(c)

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if the judgment or ruling requires clarification; or

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(d)

for any other sufficient reason.

15. The Court of Appeal had the following to say in the case of an application for review *National Bank of Kenya Ltd v Ndungu Njau*.

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

16. The Applicants in this case have not illustrated any of the grounds of the review or setting aside of the court’s ruling and though they have attached a Notice of Appeal, there is no proof of the filing of the said Appeal one year down the line. Further the applicant’s averred that they were dissatisfied with the ruling hence they had a right to appeal and not seek for setting aside of the said ruling.

17. The Court notes that this is an old matter where the Claimant needs to realize the fruits of his judgment. There must be an end to litigation. The Applicants seem to be on a mission to frustrate the said efforts by the Claimant to realize his fruits of his judgment. Their actions therefore amounted to an abuse of the Court processes by seeking the setting aside of the court’s ruling when the prayers would well be dispensed with through an appeal.



18. In the circumstances I advise the Applicants to follow up their appeal if any, to the Court of Appeal if they were aggrieved by this Court's ruling of 24th March, 2022.
19. The Application is therefore found without merit and is hereby dismissed with costs.
20. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF JULY, 2024 DELIVERED VIRTUALLY THIS 5TH DAY OF JULY, 2024

Abuodha Nelson Jorum

Judge

