

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. 198 OF 2017**

**JOYCE LISANZA**

.....**CLAIMANT/APPLICANT**

**VERSUS**

**LAPFUND SECURED RETIREMENT .....1<sup>ST</sup>**  
**RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

- 1.** Before the Court is the Claimant/Applicant's Motion application dated 3<sup>rd</sup> June, 2025, brought pursuant to Sections 3 & 16 of the Employment and Labour Relations Court Act, and Rule 74 of Employment and Labour Relations Court Rules, 2024. The Applicant seeks orders **THAT**: -
  - i. Spent
  - ii. Spent
  - iii. The Honourable Court be pleased to review its judgment delivered on the 30<sup>th</sup> day of April 2025, and considers the Claimants submissions to this suit.
  - iv. Costs of this Application be provided for.
  
- 2.** The application is supported by grounds on the face and the affidavit sworn by Joyce Lianza, the

Claimant/Applicant herein. The gist of the motion is that the Court delivered its judgment on the 30th April, 2025, dismissing the Claimant's Claim with costs.

- 3.** She states that it was only when the judgment came out that she realized that her advocates had not filed submissions on her behalf, and was then forced to seek a second opinion on the matter, hence the timeline for filing this Application for review.
- 4.** It is her case that the failure of her counsel to file submissions robbed this Honourable Court of an opportunity to consider the full facts and legal arguments pertinent to the issues between the parties.
- 5.** The Claimant states that it is for this reason that she seeks the review of the said judgment, so that her submissions can be duly considered, ensuring that the principles of fairness and natural justice are upheld.
- 6.** The 1<sup>st</sup> Respondent opposed the motion through grounds of opposition dated 30<sup>th</sup> September, 2025, wherein it argues that the application is fundamentally defective and constitutes an abuse of the court process, as it is vague, ambiguous, and fails to clearly specify the orders sought.
- 7.** The 1st Respondent avers that the Applicant has not presented any new or important evidence that was previously unavailable or could not have been produced

with due diligence at the time judgment was delivered. It states further that the Applicant has not demonstrated any error apparent on the face of the record or any sufficient cause to warrant a review under the Employment and Labour Relations Court (Procedure) Rules.

- 8.** It states that the mere claim that the Applicant's submissions were not considered is insufficient grounds for review, as submissions are not evidence and their omission does not invalidate the judgment. It avers further that even if any error were found, it would not materially affect the Court's reasoning or the outcome of the decision.
- 9.** The 1<sup>st</sup> Respondent finally states that the Application dated 3rd June 2025 is frivolous, vexatious, and an improper attempt to reopen a matter already conclusively determined by the Court, which is wholly without merit, bad in law, and ought to be dismissed with costs.
- 10.** Parties canvassed the motion by way of written submissions. Both parties filed submissions, which have been duly considered.

### **Determination**

- 11.** I have considered the application, the grounds and affidavit in support thereof, the grounds of opposition by

the 1<sup>st</sup> Respondent, and the submissions by both parties. The singular issue for determination is whether the Claimant/Applicant has satisfied the legal threshold for review of judgment under Section 16 of the Employment and Labour Relations Court Act, and Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024.

**12.** Section 16 of the Employment and Labour Relations Court Act empowers this court to review its judgments, awards, orders, or decrees in accordance with the Employment and Labour Relations Court (Procedure) Rules. Rule 74(1) of the ELRC (Procedure) Rules, 2024, sets out the circumstances under which a review may be granted, namely;

- a) *discovery of new and important evidence which was not within the knowledge of the applicant;*
- b) *an error apparent on the face of the record;*
- c) *The judgment requires clarification; or*
- d) *any other sufficient reason.*

**13.** In ***National Bank of Kenya Ltd vs Ndungu Njau (1997) eKLR***, the court stated thus: -

***“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...”***

- 14.** The Applicant's primary contention is that her counsel failed to file submissions and that this omission denied the Court the benefit of her legal arguments.
- 15.** The Applicant has not alleged discovery of new evidence, nor has she pointed out any specific error apparent on the face of the record or that the judgment requires clarification.
- 16.** The question, therefore, is whether failure by counsel to file submissions amounts to "sufficient reason" to warrant review of the judgment herein.
- 17.** Courts have consistently held that submissions are not evidence, but are meant to only serve in guiding or persuading the Court, and their absence does not in any way invalidate a judgment where the Court has already considered the pleadings, evidence, and the applicable law.
- 18.** In the instant case, the Applicant does not dispute that all evidence necessary for the determination of the suit was already on record, and the omission relates only to written submissions.
- 19.** It is generally agreed that mistake of counsel should not be visited on an innocent litigant. This adage, however, does not automatically entitle a party to review or

reopening of a concluded matter, premised on the understanding that a litigant is generally bound by the acts or omissions of their advocate.

**20.** The Claimant/Applicant has not demonstrated that the Court misapprehended the evidence, overlooked any material fact on record, or reached an erroneous conclusion as a result of the absence of her submissions. This then goes to say that her assertion is merely speculative.

**21.** In the circumstances, I find and hold that the reason advanced herein does not fall within the recognised grounds for review and does not constitute “sufficient cause” under Rule 74 of the ELRC Procedure Rules, 2024.

**22.** The Court’s judgment of 30<sup>th</sup> April 2025 therefore stands, having found no reason to interfere with it.

**23.** The Notice of Motion dated 3<sup>rd</sup> June 2025 is devoid of merit, and is for dismissal and is hereby dismissed.

**24.** I make no orders on costs.

**25.** It is so ordered.

**SIGNED, DELIVERED, AND DATED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Ochieng h/b for Mr. Onyony for the Claimant/Applicant

Ms. Wagasa present for the Respondent

Ms. Esther S-C/A