



**Pressmaster Limited v Elego (Civil Application 49 of 2019)
[2022] KECA 571 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KECA 571 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 49 OF 2019
RN NAMBUYE, HM OKWENGU & A MBOGHOLI-MSAGHA, JJA
APRIL 28, 2022**

BETWEEN

PRESSMASTER LIMITED APPLICANT

AND

JOHN ELEGO & 103 OTHERS RESPONDENT

RULING

- [1] By a notice of motion dated 7th May, 2021 the applicant Pressmaster Limited seeks to have the order made by this Court on 23rd April, 2021, for the applicant to deposit security in the form of a bank guarantee for Kshs. 64,859,427, reviewed downwards to Kshs. 16,424,119.28. The order for security was a condition for stay of execution of the judgment and decree of the Employment and Labour Relations Court (ELRC) delivered on 10th August, 2018.
- [2] According to the grounds stated on the face of the motion, the amount of the security was based on a computation by the respondent which the ELRC adopted placing the award in favour of the respondent at Kshs. 64,854,427. This computation was erroneous and so the respondent filed an application for the figure to be rectified. Both parties presented new computations, and upon the ELRC considering the different computations delivered a ruling on 25th September, 2020 placing the award to the claimants at Kshs. 16,424,119.28. This information was not within the knowledge of this Court when it made the order for security, hence the application seeking to have the security reviewed to be compatible with the award.
- [3] The applicant citing the judgment of Musinga, JA in *Nguruman Limited v Shompole Group & Anor* [2014] eKLR, argues that the Court has jurisdiction to review the order, and that the respondent will not suffer any prejudice if the orders are reviewed as the purpose of the order is to secure the judgment of the ELRC which following the ELRC's ruling of 25th September 2020, stands at Kshs. 16,424,119.28.



- [4] The respondents oppose the motion through an affidavit sworn by John Elego Navade (Navade), who claims to be a representative of the claimants. Navade deposes that: the order of the Court for security was in accordance with the judgment of the ELRC dated 10th August 2018; the applicant has failed to provide security within 30 days as ordered; the applicant is coming to the Court with unclean hands; the applicant's motion raises issues not contemplated in the ruling subject of this appeal; the respondents were dismissed from work in 2013, and 9 years down the road, they have not been paid their dues, due to delaying tactics employed by the applicant; and that the application is an abuse of the Court process.
- [5] We have carefully considered the applicant's motion and the rival submissions made by the parties. The applicant's motion is brought under Articles 159 and 259 of *the Constitution* and Sections 3 and 3A of the *Appellate Jurisdiction Act*. In other words, the applicant is invoking the inherent jurisdiction of this Court. Nevertheless, in its submissions, the applicant has sought to rely on Rule 57(2) of the *Court Rules*, citing Musinga, JA in *Nguruman Limited vs Shompole Group & Anor* (*supra*).
- [6] Rule 57 of the *Court of Appeal Rules* states as follows:
- “(1) An order made on an application heard by a single judge may be varied or rescinded by that Judge, or in the absence of that judge by any other judge or by the Court on the application of any person affected thereby, if –
- (a) the order was one extending the time for doing any act otherwise than to a specific date.
- (b) the order was one permitting the doing of some act without specifying the date by which the act was to be done, and the person on whose application the order was made has failed to show reasonable diligence in the matter.
- (2) An order made on an application to the Court may similarly be varied or rescinded by the Court.”
- (Emphasis added)
- [7] A reading of Rule 57 shows that it gives the Court discretion to vary or rescind an order that was made by the Court only in two specific situations. First, where the order sought to be varied relates to extension of time, and secondly, where the order sought to be varied seeks specification of the date by which an act is to be done.
- [8] The order that the applicant seeks to review was made by this Court on 23rd April, 2021. It required the applicant to provide security for a specific amount within a specified time. What the applicant seeks to review is the amount of the security to be provided. Therefore, what the applicant seeks is not covered under Rule 57(1)(a) that provides for extension of time, or Rule 57(1)(b) that provides for specification of the date by which an act is to be done.
- [9] With regard to the Court's inherent powers, that is a discretionary power that is used by the Court with a view to meet the ends of justice or to prevent abuse of the process of the Court. It is clear that the applicant is coming to this Court with unclean hands, as it seeks to review an order of the Court that it was required to comply with, within 30 days, but has to date, almost a year later, not complied with. Secondly, the ruling of the ELRC reviewing the amount of the award was delivered on 25th September, 2020. The applicant's motion dated 12th February, 2019 which resulted in the orders now sought to be reviewed, was heard on 16th March, 2021. The applicant has not given any reason why it



did not bring to the attention of the Court the ruling of 25th September, 2020. It is apparent that the applicant was not diligent and is not deserving of the exercise of this Court's discretion.

[10] In *Standard Chartered Financial Services Limited & 2 others v Manchester Outfitters (Suiting Division) Limited (now known as King Woollen Mills Limited) & 2 others* [2016] eKLR, this Court considered its powers to reopen and review its decision, and held, *inter alia*, that the residual jurisdiction of the Court is provided for in Section 3A of the *Appellate Jurisdiction Act* under which it could re-open and rehear a concluded matter, where it was in the interest of justice to do so. However, that residual jurisdiction will only be exercised in exceptional situations where the need to obviate injustice outweigh the principle of finality in litigation.

[11] Thus, although this Court has a residual power to review its orders, that power is exercised sparingly and in exceptional circumstances. In this instance we do not see any exceptional circumstances that would justify the exercise of such residual power, nor has the applicant demonstrated any prejudice or injustice that it is likely to suffer from the orders sought to be reviewed.

For these reason, we find no merit in this application. It is accordingly dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2022.

R. N. NAMBUYE

JUDGE OF APPEAL

HANNAH OKWENGU

JUDGE OF APPEAL

A. MBOGHOLI MSAGHA

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

