



Nandi v Maisha Packaging Company Limited & another (Employment and Labour Relations Cause 1031 of 2016) [2025] KEELRC 14 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 14 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1031 OF 2016
NJ ABUODHA, J
JANUARY 17, 2025**

BETWEEN

HESBON OKELO NANDI CLAIMANT

AND

MAISHA PACKAGING COMPANY LIMITED 1ST RESPONDENT

NATIONAL CEMENT COMPANY LIMITED 2ND RESPONDENT

RULING

1. The Applicant filed application dated 29th August, 2023 under sections 1A, 1B, and 3A of the [Civil Procedure Act](#), Order 45 rule 1(1)(a) & Order 51, rule 1 of the Civil Procedure Rules seeking for orders of the court to review its ruling made on 27th February 2023 and set aside item no. 2 of the order to allow the Claimant to fix the matter for hearing without further delay.
2. The application was supported by the Affidavit of A. P. Ochieng’ Ogotu the Advocate for the Claimant herein who averred that the honourable court allowed the Claimant’s application dated 19th October, 2022 with costs to the Respondents on the condition that the taxed costs be paid before the suit is fixed for further hearing.
3. Counsel averred that the Claimant was unable to comply with the condition of payment of taxed costs since the Respondents have not taxed their costs. That 6 months after the order was made there was no action by the Respondents.
4. Counsel averred that the Claimant was being prejudiced by the inaction of the Respondents, and it was only just and fair that the condition of payment of taxed costs before the matter may be fixed for further hearing be set aside. That she has written to the Respondents’ advocates to prompt them to take the necessary action but they have ignored the letter.
5. Counsel averred that it was in the interest of justice that the Application be granted.



6. The Respondents filed their replying affidavit sworn by Erastus M. Musyoka on 29th May 2024 and averred that the Application made by the Claimant was frivolous, vexatious and abuse of court process as it is prosecuted with inordinate delays and is overtaken by events.
7. The Respondents averred that the court did not set any timelines within which they were to file their Bill of Costs and that they filed their Bill of costs on 15th September, 2023 as Nairobi ELRC Misc Application No. E189 of 2023 while the Claimant did not serve them with this Application until 22nd April, 2024, 8 months after filing.
8. The Respondents averred that the Claimant despite being served did not attend court for any taxation and only surfaced on 7th May, 2024 when the matter was coming for taxation before the Deputy Registrar. That the Claimant complained that he had an application in this matter which he had not taken a date for which turned to be this application. That the matter was placed before Hon. Justice B. Ongaya on 8th May, 2024 who directed that the taxation ought to be proceeded under the present suit and ordered that the taxation file be discontinued.
9. The Respondents averred that they complied with those orders made by the court filed the Bill of Costs dated 8th May, 2024 the same day the orders were issued. That there is a pending Bill of Costs filed on 8th May 2024 in compliance with the orders of the Court made on even date which ought to be considered in priority as the condition set by Court in its Ruling on 27th February 2023.
10. The Respondents prayed that the Claimants Application which remained unprosecuted be dismissed.
11. The Application was dispensed of by written submissions.

Determination

12. The court has considered the pleadings and submissions filed by the parties herein and proceed to analyse them as follows.
13. Section 16 of the *Employment and Labour Relations Court Act* gives the Court power to review its judgements, awards, orders or decrees in accordance with the Rules.
14. Furthermore, Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides for review as follows:-
 - (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—
 - b. on account of some mistake or error apparent on the face of the record;
 - d. for any other sufficient reason.
15. When it comes to the grounds of review the Applicant rely on being unable to comply with the condition of payment of taxed costs so that the matter may be fixed for hearing since the Respondents have not taxed their costs.
16. The Respondents on the other hand explained that there was no timeline set for the filing of the Bill of Cost and the 1st and 2nd Respondents were unaware of the Application as it was never shared until 22nd April 2024 and they filed Bill of Costs on 15th September 2023 is also noted. This court notes that there is a pending Bill of Costs application in court which was filed immediately the court directed that



the same be filed in this present suit. It is after the recent Bill of Costs application is dispensed with that the matter may be set down for hearing as directed by the court.

17. In *Zablon Mokuva v Solomon M. Choti & 3 others* [2016] eKLR while relying on court of Appeal decisions held that: - The Court of Appeal had the following to say in an application for review in the case of *National Bank of Kenya Ltd vs 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.

28. Upon looking at the Applicant’s ground for review, this court is unable to place the grounds therein under those stated in the above Rules. There is neither discovery of new and important matter or evidence, a mistake or error apparent on the face of the record nor a sufficient reason given as to why this court should consider a review of the Ruling dated 27th February 2023. To this court the Claimant’s Application which was filed in August, 2023 ought to be prosecuted at the earliest time possible but since the Respondents have filed their Bill of costs the Claimant’s application is clearly overtaken by events.
30. The court is equally in agreement with the sentiments of the Learned Judge M. Mbaru in finding that the Applicant was an indolent litigant and was only allowed to argue his case on condition that he pays the total costs due to the Respondents which should be adhered to as court does not issue orders in vain.
31. The upshot is that the Application lacks merit and is therefore dismissed with no orders as to costs.
32. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF JANUARY 2025

DELIVERED VIRTUALLY THIS 17TH DAY OF JANUARY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

