



**Amalgamated Union of Kenya Metal Workers v Power Protection Limited
(Cause E591 of 2020) [2023] KEELRC 2602 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2602 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E591 OF 2020
MA ONYANGO, J
OCTOBER 19, 2023**

**BETWEEN
AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT
AND
POWER PROTECTION LIMITED RESPONDENT**

RULING

1. This ruling is in respect of the Notice of Motion dated 28th March 2022 brought by the Respondent under the provisions of Order 54 Rule 1, Order 42 Rule 6 of the Civil Procedure Rules. It seeks the following orders:
 - i. That the judgment made by this Court be reviewed.
 - ii. Spent
 - iii. That the costs of this application be provided for.
 - iv. That such further and other reliefs be granted as this court deems fit and expedient in the circumstances.
2. The grounds upon which the application is made are contained on the face of the application being that the said judgment is premised on an error on the face of the record that the claim is undefended whilst actually the Respondent has filed defence and its submissions; that it is in the interest of justice that the said judgment is reviewed; that if a stay of execution is not granted substantial loss may result to the Respondent as once the said money is paid to the Claimant, it may not be recoverable; that the appeal herein has a reasonable chance of success and if execution is carried out it will render the appeal nugatory, and, that there has been no unreasonable delay in making this application.
3. The application is opposed. The Claimant filed a Replying Affidavit dated 25th May 2022 sworn by its General Secretary, Rose Omamo. The deponent contends that despite being served with various



notices on various diverse dates, the Respondent failed to attend court when the matter was scheduled for mentions.

4. It is further deposed that the court will be setting a wrong precedence by reviewing or allowing for a review where a party had ample opportunity to make representation but chose not to and that it is trite law that equity aid the vigilant but not the indolent.
5. The Claimant states that it is only just and expedient for the Court to uphold its decision and render the case as closed.
6. The application was canvassed through written submissions.
7. In its submissions dated 18th July 2022, the Respondent contends that upon being served with the Memorandum of claim, it filed its Memorandum of Appearance and a Memorandum of Response both dated 7th October 2020. It is the Respondent's submission that the it went ahead and filed its final submissions on 3rd February 2022. It was thus submitted that it is in the interest of justice and in line with the principles of natural justice that the Respondent's Memorandum in response to the Claimant's claim and the submissions thereto be considered by the court before making its final judgment.
8. The Claimant on the other hand has submitted that the Respondent was invited severally to appear in court for pre-trial directions, hearings and also for the judgment date which it never honoured.
9. The Claimant contends that the Respondent was filing documents at will and pleasure without seeking leave of the court and as such, the Claimant sought to have any document filed out of time and without seeking leave of the court be expunged from the record.
10. It is further submitted that, it will prejudicial, unjust and unfair on the Claimant after having spent its resources and time in notifying the Respondent, be subjected to the same procedure and process at the behest of a party who showed no interest, concern nor respect to the court's directives.

Determination

11. The applicable provisions in addressing the question of review is provided under Rule 33 of the Employment and Labour Relations Court (Procedure) rules, 2016 (Court Rules).
12. The Court Rules requires that;
 33.
 - (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) 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;
 - (b) on account of some mistake or error apparent on the face of the record;
 - (c) if the judgment or ruling requires clarification; or
 - (d) for any other sufficient reason.



13. I have perused the impugned judgment and particularly paragraph ten (10) being sought to be reviewed at length. It is evident that indeed there is error apparent on the face of the record as from the record the Respondent did file a Memorandum of Appearance dated 7th October 2020, and a Respondent's Memorandum dated 15th October 2020 in response to the Memorandum of Claim.
14. I am therefore I am satisfied that the reasons afforded by the applicant in the present instance are sufficient enough to warrant the orders sought.
15. In the end therefore, I allow the application dated 28th March 2022 and the judgment delivered on 11th February 2022 is reviewed at paragraph 10 as follows:

Paragraph 10 of the judgement dated 11th February 2022 is deleted and replaced with the following new paragraph:

10. The Respondent filed a Memorandum in defence to the Claim dated 15th October, 2020 through the firm of Philip Muoki & Co. Advocates in which it denied the averments in the Memorandum of Claim. Specifically, the Respondent denied that the Claimant has locus to represent the grievant and further denied the averments in paragraphs 3,4,5 and 6 of the Claim. The Respondent averred that the Claim was an abuse of court process, that the same discloses no cause of action against the Respondent and is an attempt to embarrass the Respondent. It prayed that the same be dismissed with costs. The Respondent did not file any documents or witness statement in respect of the Claim. The Respondent also did not attend court on all the days that the case came up in court even though it was properly served and affidavits of service filed in court. The suit therefore proceeded in the absence of the Respondent. The Respondent filed written submissions dated 3rd February 2022.

16. I have considered the averments in the defence and the submissions. The Respondent did not adduce any documents in the defence to support the averments therein and in the submissions. The findings in the judgment and the award are therefore unaffected by the defence and submissions and remains the same. the judgment is accordingly amended at paragraph 10 thereof by deleting paragraph 10 and replacing it with a new paragraph 10 as set out at paragraph 16 of this ruling.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 19TH DAY OF OCTOBER, 2023.

M. ONYANGO

JUDGE

