



**Kenya Engineering Workers' Union v Jokali Handling Services Limited & another
(Cause 18 of 2017) [2023] KEELRC 2525 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2525 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 18 OF 2017
CN BAARI, J
OCTOBER 19, 2023**

BETWEEN

KENYA ENGINEERING WORKERS' UNION CLAIMANT

AND

JOKALI HANDLING SERVICES LIMITED 1ST RESPONDENT

ABYSSINA IRON & STEEL LIMITED-KISUMU 2ND RESPONDENT

RULING

1. Before Court is the Claimant's motion application dated 16th December, 2022, and filed on 25th January, 2023. The motion is brought pursuant to Section 16 of the *Employment and Labour Relations Court Act* and Rule 33 of the *Employment and Labour Relations Court (Procedure Rules)*.
2. The Applicant seeks review of the judgment rendered by this Court on 8th December, 2022, and grant of the prayers sought in the memorandum of claim dated 4th June, 2022, together with the costs of the application.
3. The motion is supported by the grounds on the face and the supporting affidavit of one Wycliffe Nyamwata sworn on 16th December, 2022.
4. The Applicant avers that the Court seem to have based its judgment on the Claimant's memorandum of claim and not the amended memorandum of claim dated 4th June, 2022, and their submissions of 13th October, 2022. It is the Claimant/Applicant's position that the issues of whether the grievants are deemed to be in the service of the Respondents, and whether they are entitled to benefits and who is responsible to pay, was not addressed in the judgment.
5. The Applicant states that it would not have sought review of the judgment, but would instead, have filed a new suit but that the limitation period will affect any new suit on the matter.



6. It is the Applicant's case that the orders issued on 15th May, 2017, are still in force on the redundancy, wherein, the Respondents were directed to comply with Section 40 of the [Employment Act](#), as the orders were neither reviewed nor set aside.
7. The 1st Respondent filed grounds of opposition against the Applicant's motion dated 22nd February, 2023. It avers that the application is annexed to a defective supporting affidavit, and hence no evidence has been put forward in support of the motion.
8. The 1st Respondent further avers that the Applicant has not shown that the Court in its judgment disregarded some of the prayers in the Claimant's memorandum of claim.
9. It is the 1st Respondent's assertion that the Court pronounced itself on the issues and the prayers now sought, cannot be sustained in the absence of a relationship between itself and the Claimant, or between the 2nd Respondent and the Claimant.
10. The 2nd Respondent likewise opposed the motion in an undated replying affidavit sworn by James Abande, and filed on 21st February, 2023. The 2nd Respondent states that the application as filed does not meet the threshold set in Rule 33 of the [Employment and Labour Relations Court \(Procedure\) Rules](#), as it does not state new facts, error(s) and does not raise sufficient cause to review the judgment.
11. It is the 2nd Respondent's aversion that the Court dealt with the Claimant's amended memorandum of claim, being the one that brought the 2nd Respondent into these proceedings as it was never party to the original claim.
12. It further states that the Court substantially dealt with the issue as to the culpability of the 2nd Respondent at paragraphs 41-46 of the judgment, and which position can only change on appeal.
13. Parties' submissions on the matter have been duly considered.

Analysis and Determination

14. The issue for consideration is whether the Applicant is entitled to review orders.
15. Rule 33 (1) of the [Employment and Labour Relations Court \(Procedure\) Rules](#), 2016 provides thus on review:

“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.”
16. The question for this Court is whether the prayer for review is premised on discovery of new and important evidence which was not within the knowledge of the Applicant at the time the judgment was



rendered; or that there is an error or mistake apparent on the face of the record; or that the judgment requires clarification; and finally, that there exists sufficient cause to review the judgment.

17. The Applicant has based its motion on an amended memorandum of claim, which in their opinion, the Court may not have considered when arriving at its judgment. It also states that there were orders issued by this Court (Maureen J) in the year 2017, and which it argues are still in force as no subsequent orders were granted to either review or set them aside.
18. The Court record shows that the orders staying redundancy of the Claimant's members issued on 4th May, 2017, were not complied, and it is also on record that a contempt application meant to secure compliance of those orders was dismissed. It is thus not true that the orders referred to by the Applicant are still in force.
19. Secondly, when this matter was before Court on 4th November, 2022, Mr. Makale appearing for the Claimant, told this Court that he did not wish to call witness for reason that the only issue pending determination, is remission to the Claimant of union dues and which they sought to prove by way of written submission. The Court then allowed parties to file submissions and subsequently, rendered the judgment on 8th December, 2023.
20. The Court in its judgment as correctly submitted by the Applicant, only dealt with the issue of union dues. This was informed by the Claimant's express indication that they would not call witness to prove the rest of the prayers in the amended memorandum of claim.
21. The Applicant in its motion, now seem to be asking the Court to reopen the case, so as to allow them to adduce their evidence on whether or not their members are entitled to benefits, and who of the two Respondents is liable to pay, if all.
22. These could obviously not be sufficiently proved through written submission. These are matters that required presentation of witnesses to show who the employer was, how much they were owed and on what account or basis, amongst others.
23. In the circumstances, I return that the Court dealt with the singular matter placed before it, and the motion as filed does not merit award of review orders. It is dismissed with costs to the Respondents.
24. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH DAY OF OCTOBER, 2023.

CHRISTINE N. BAARI

JUDGE

