



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISC CAUSE NO. 1 OF 2022

(Originally High Court Misc Cause No. 156 of 2020)

ODHIAMBO OWITI & CO ADVOCATES.....APPLICANT

v

EQUATOR BOTTLERS LTD.....RESPONDENT

RULING

1. On 10 March 2022, the Court adopted as a judgment of the Court a certificate of costs in High Court Misc Civil Cause No. 156 of 2020, *Odhiambo Owiti & Co. Advocates v Equator Bottlers Ltd.*
2. The Respondent was not satisfied, and on 14 March 2022, it filed a Motion seeking orders:
 - (1) ...
 - (2) THAT the Court be pleased to review its orders allowing the Respondent/advocates application dated 17th December 2020.
 - (3) The Court be pleased to grant the counsel for client/applicant an opportunity to argue its case against the Respondent/advocate application dated 17th December 2020.
 - (4) The Court be pleased to consider the submissions by the counsel for the client/applicant dated 20th December 2021 in making a new determination regarding the Respondent/advocate application dated 17th December 2020.
 - (5) Such other further order as this Honourable Court may deem fit to grant.
 - (6) Cost of the suit and application be provided for.
3. The grounds in support of the application were that when the Court allowed the application dated 17 December 2020, it was coming up for mention and not hearing; the Respondent was not afforded an opportunity to be heard because the advocate who appeared in Court was only holding brief as the advocate with conduct of the application was before another Court; its submissions were not considered and that the Respondent stood to be prejudiced if the review application was not allowed.
4. The advocate filed Grounds of Opposition on 24 March 2022, contending that the review application did not meet the threshold set out in Order 45 Rule 1 of the Civil Procedure Rules.
5. The Court took brief oral submissions from the parties on 24 March 2022.
6. The Court has considered the application, supporting affidavit, Grounds of Opposition and submissions.
7. The Employment and Labour Relations Court (Procedure) Rules, 2016, have provisions governing review applications. The reliance by the parties on Order 45 of the Civil Procedure Rules was therefore misplaced.
8. On the merits of the application, the Court has looked at the record and notes made by the High Court.
9. On 8 October 2021, the High Court directed the parties to file and exchange responses.

10. When the application was placed before the High Court on 23 November 2021, the Court again directed the parties to file and exchange submissions.
11. The advocate/applicant filed its submissions on 2 December 2021 and the Respondent on 11 February 2022.
12. The parties again appeared before the High Court on 25 February 2022, and it directed:

... The file to be placed before the Judge in charge of that Court on 9/3/2022 for further orders and/or directions.
13. The application was placed before this Court on 10 March 2022 it was coming for further orders or directions and the parties were present, although there was an advocate holding brief for Mr. Wathuta for the Respondent.
14. Since the parties had filed submissions and the application was coming for further orders/directions, the Court went ahead and delivered a Ruling.
15. The Court consequently finds the argument that when it gave its Ruling, the application had been scheduled for mention disingenuous, and an attempt to claw on a straw, for the parties had been directed and given time to file and exchange submissions. It cannot be that the Respondent omitted to put its case in the submissions.
16. The assertion that the application was for mention is therefore an afterthought.
17. The Respondent also contended that it was not heard because the advocate in attendance was only holding brief. The obligation of an advocate holding brief is not limited to adjourning a case. Such an advocate should be ready to argue the case.
18. The contention that the Respondent was not therefore allowed an opportunity to be heard because the advocate present was only holding brief is therefore not candid nor supported by case law or practice.
19. The Respondent further argued that the Court had not considered its submissions. In its Ruling sought to be reviewed, the Court explicitly stated that it had considered the submissions on record.
20. The Court will agree with the advocate/applicant that the review application did not only fail to meet the review threshold but was without merit.
21. The Motion dated 10 March 2022 is dismissed with further costs to the advocate/applicant.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 27TH DAY OF APRIL 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For applicant Odhiambo Owiti & Co. Advocates

For Respondent Kiragu Wathuta & Co. Advocates

Court Assistant Chrispo Aura