



**Auma v Rickshaw Travels (K) Limited (Cause 129 of 2015)
[2022] KEELRC 12702 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12702 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 129 OF 2015**

**M MBARŪ, J
MAY 26, 2022**

BETWEEN

MOLLY AUMA CLAIMANT

AND

RICKSHAW TRAVELS (K) LIMITED RESPONDENT

RULING

1. The respondent, Rickshaw Travels (K) Limited filed application dated December 3, 2020 under the provisions of order 45 rule 1 and 2 and seeking for orders that;
 - a. The judgement by the court on November 11, 2020 be varied or reviewed to incorporate both legal and factual arguments of the respondent as contained in its written submissions dated October 21, 2020.
 - b. The respondent's written submissions dated October 21, 2020 and filed on October 23, 2020 be deemed to be properly filed and duly on record.
 - c. The judicial officers in charge of IT department at the Employment and Labour Relations Court at Nairobi be summoned by the court to explain the circumstances which led to their failure to include the respondent's written submissions in court file when the same was filed in time on October 23, 2020 as was required by court thereby rendering the decision in the matter to be made in the absence of the said written submissions.
2. The application is supported by the affidavit of Kenneth Mumbo advocate for the respondent and on the grounds that judgement herein was rendered without due consideration of the respondent's legal and factual arguments contained in the written submissions filed on October 23, 2020. Such failure arose through e-filing inside the court by failing to ensure the filed submissions were placed before the judge for consideration in judgement.



3. Mumbo advocate also avers in his affidavit that he successfully filed his written submissions on October 23, 2020 and a receipt issue save his link to the court proceedings could not operate in two instances when the matter was scheduled for hearing to take a date for judgement delivered on November 11, 2020 and when he read it as apparent that judgement was rendered in the absence of the respondent's written submissions and list of authorities.
4. In reply, the claimant filed a replying affidavit dated February 8, 2021 and on May 16, 2022 the claimant's advocate attended court and withdrew the replying affidavit.
5. The respondent submitted that written submissions were filed as directed by the court and judgement should have put into account such record as held in *Mumby's Food Products Limited & 2 others v Co-operative Merchant Bank Limited Civil Appeal No.270 of 2002* and under rule 32 of the *Industrial Court (Procedure) Rules 2010*¹ a person who is aggrieved by a decree off the court should apply for the review of the same.
6. The application is not opposed save it raises serious matters of law and procedure which the court is bound to address on the merits.
7. The substantive issue sought in the application by the respondent as the applicant is that;

... the judgement made on November 11, 2020 be varied or reviewed ...
8. That the court officers in charge of IT be summoned to explain the circumstances which led to the failure to include the written submissions in the court file as filed on October 23, 2020.
9. An application seeking for a review of orders issued by the court should be premised on the provisions of rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* (the Rules). For reference, I shall lift the entire rules in the following terms;
 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.
 - (2) An application for review of a decree or order of the court under subparagraphs (b), (c) or (d), shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the court station.
 - (3) A party seeking review of a decree or order of the court shall apply to the court by way of notice of motion supported by an affidavit and shall file a copy of the judgment or decree or ruling or order to be reviewed.

¹ The Rules, Industrial Court (Procedure) Rules, 2010 have since been repealed by Employment and Labour Relations Court (Procedure) Rules, 2016.



the applicant seeking a review is guided by the principles outlined above. One must attach the subject judgement or ruling to be reviewed and demonstrate that there is discovery of new matter or evidence, there is mistake or error, need for clarification or there is sufficient cause. It is not an argumentative matter. The applicant must be clear as to the matters outlined under rule 33(1) (a) to (d) to justify a review.

10. Where such principles do not apply, then the application to be made is not for a review.
11. The application herein, the grounds thereto and the affidavit in support do not in any manner delve into any principle under rule 33 of the court rules. It does not raise any issue to justify a review of the judgement herein delivered on November 11, 2020.
12. Despite the claimant withdrawing the replying affidavit, the application dated December 3, 2020 is without merit and is hereby dismissed. No orders on costs.

DELIVERED IN COURT AT NAIROBI THIS 26TH DAY OF MAY, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

