



REPUBLIC OF KENYA



KENYA LAW
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**Superforam Limited v Olwanda & 7 others (Appeal E007 of 2022)
[2022] KEELRC 14650 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14650 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E007 OF 2022
M MBARÚ, J
OCTOBER 27, 2022**

BETWEEN

SUPERFORAM LIMITED APPELLANT

AND

GEORGE OLWANDA 1ST RESPONDENT

VINCENT NYAKUNDI 2ND RESPONDENT

JAMES LODI 3RD RESPONDENT

BERNARD OGWARO 4TH RESPONDENT

DIONYIUS MOENGA 5TH RESPONDENT

PATRICK MOMANYI 6TH RESPONDENT

ROBAI KHAVEREE 7TH RESPONDENT

DANREE MULTIHANDLING SERVICES LIMITED 8TH RESPONDENT

RULING

- 1 The 1st to 7th respondents filed application dated June 15, 2022 seeking that the judgement of the court delivered on May 12, 2022 be reviewed, varied and clarified as there was a fundamental issue on the face of the record that is not clear.
- 2 The application is made on the grounds that There was evidence tendered at the disciplinary floor that all the respondents called, incited and instigated others to strike but the strictures of Section 107 to 109 of the *Evidence Act* read together with Section 41 of the *Employment Act* were uncontested and the condemnation under Section 79 and 80 of the *Employment Act*.



- 3 The court by error failed to address the fact that there was no compliance with Section 41 of the *Employment Act*. The right to equal protection of the law is secured under Article 50 and 25 of the *Constitution* and cannot be derogated and for these reasons, the application be allowed and judgement reviewed and or varied to this extent.
- 4 The application is supported by the affidavit of George Olwanda the 1st respondent.
- 5 In reply, the Appellant filed the Replying Affidavit of Reuben Nyaberi the human resource manager and who avers that the judgement which issued on May 12, 2022 was conclusive and addressed all issues brought forth in the appeal and there is no new matter or evidence produced by the respondent to justify the order of review of the judgement. The court correctly made a finding that following a meeting at the shop floor the respondents failed to heed directions by the appellant and went on a go slow and such industrial action was not protected and hence, such conclusively addressed the appeal. The instant application should be dismissed with costs.
- 6 Both parties filed written submissions which the court has analysed and the single issue for determination is whether the court should vary, review and or clarify the judgement delivered on May 12, 2022 on the basis that there was no evidence tendered at the disciplinary floor at all of the respondents calling, inciting, instigating others to strike in terms of the strictures of section 107 to 109 of the *Evidence Act* and Sections 41 and 80 of the *Employment Act*.
- 7 This being an appeal, the rules with regard to whether to vary, review and or clarify a judgement of the court is governed under the same rules under the *Employment and Labour Relations Court (Procedure) Rules, 2016* under Rule 33 (the Court Rules) and which rule is not far from the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 thereof which provides that;
- Any person considering himself aggrieved—
- . by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
- 8 The same parameters are addressed under Rule 33 of the Court Rules. To justify a variation of the judgement, a review or clarification, a party must satisfy that there exists important matter or evidence which was not available during the hearing and that there is a mistake apparent on the face of the record and that there exists good cause to justify a review.
- 9 It is not sufficient to state that the findings of the court were not correct. Such is not a matter subject of review. Whether there court was wrong in its findings or not is also not a subject of review hence the existence of Rule 33 of the Court Rules to guide a party on what is ripe for review and if not, if aggrieved by the findings, the option Is not a review.
- 10 The respondents contests that there was no evidence tendered at the disciplinary floor that they called incited or instigated others to take a strike. Such matter is not new; the findings of the court in the judgement addressed such matter substantively and cannot be a basis for review of the judgement.
- 11 Accordingly, application dated June 15, 2022 is hereby found without merit and is hereby dismissed with costs to the appellant.



Delivered in court at Nairobi this 27th day of October, 2022.

M MBARŪ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

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