



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT BUNGOMA**

**CAUSE NO. 47 OF 2018**

**WILFRED OLOOKO MUROKA.....CLAIMANT**

**VERSUS**

**NZOIA SUGAR COMPANY LIMITED.....RESPONDENT**

**RULING**

1. The applicant filed application dated 14/10/2019 on the even date praying for an Order that;

**(a) The Honourable Court be pleased to review, vary and or set aside its judgment dated 26/9/2019 in Cause No. 47 of 2008.**

2. The application is premised on the following grounds:-

(a) That there are errors apparent on the face of the record in the judgment listed in paragraphs 2 to 7 thereof.

3. The application was opposed by a replying affidavit deposited to by the legal officer of the Respondent M/s Ritah N. Mukhongo.

4. The deponent states that the application is a gross abuse of the process of the Court in that the applicant having been dissatisfied with the judgment of the Court ought to have filed an Appeal at the Court of Appeal but not to invite the Court to revisit its decision on factual matters set out in the judgment.

5. That the application does not meet the criteria set out in Rule 33(1) (a) to (d) of the Employment and Labour Relations Court (Procedure) Rules, 2016.

6. That indeed the Court made a proper evaluation of facts presented and rendered an appropriate judgment which is subject for appeal before the Court of Appeal.

7. The Court has considered all the matters raised by the applicant and is satisfied they are all matters that may be properly raised before the Court of Appeal but not before the trial judge.

8. The trial Court is now *functus officio* and cannot reconsider its findings of law and fact made in its judgment.

9. The application clearly lacks merit and is dismissed.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of February, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open

court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Applicant in person

M/s J.O. Makal Advocate for the respondent

Chrispo: Court clerk