



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CIVIL APPEAL NO. 40 OF 2018

(Originally Kakamega High Court Civil Appeal No. 14 of 2017)

WEST KENYA SUGAR CO LTD.....APPELLANT

v

DANIEL MWANJE AKATU.....RESPONDENT

(Being an Appeal from the judgment and decree of Hon J. Ong'ondo PM Kakamega

Law Courts in Kakamega CMCC No. 201 of 2015 delivered on 24/1/2017)

RULING

1. In a judgment delivered on 17 February 2021, the Court dismissed the Appeal by West Kenya Sugar Co Ltd (the Appellant).
2. In paragraph 6 of the judgment, the Court noted that the Appellant had not filed its submissions on the Appeal.
3. On 2 March 2021, the Appellant filed a Motion seeking a review and setting aside of the judgment on the ground that there was an error on the face of the record (the Appellant contended that it had filed its submissions on 6 October 2020, while the Appeal file was still in Kakamega and that the Court had not considered the same).
4. The Respondent filed Grounds of Opposition to the Motion on 10 March 2021.
5. The Court has perused the record again, and the following facts emerge.
6. First, the High Court, Kakamega, transferred the Appeal to this Court on 29 November 2018, and the file was received on 11 December 2018.
7. The Appellant was present when the transfer order was made.
8. Despite alleging that it had filed its submissions before the High Court in Kakamega, the Appellant did not tender any explanation why and how the submissions were filed in Kakamega on 6 October 2020, when it was aware of the transfer order in 2018.
9. Two, when the Appeal was placed before the Court on 17 November 2020, after it had issued a Notice to Show Cause why the Appeal should not be dismissed, the Appellant was represented by Ms Lukasile.
10. Ms Lukasile requested the Court to allow her 14 days to file and serve submissions.
11. The Court allowed the request and directed the Appellant to file and serve its submissions on or before 4 December 2020. The Appellant did not comply with the order or write to the Court to state that it had filed the submissions.
12. Three, the submissions filed in Kakamega were not on record.
13. When the Court directed the Appellant on 22 March 2021 to provide evidence that it had paid the filing fees for the submissions in Kakamega, a copy of an official receipt could not be produced.

14. From the above facts, and considering that the Appellant has not demonstrated how its submissions would have affected the judgment or the facts or legal issues the Court allegedly did not consider, the Court finds the Motion without merit.

15. It is dismissed with costs to the Respondent.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 6TH DAY OF OCTOBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Olendo, Orare & Samba LLP, Advocates

For Respondent Abok Odhiambo & Co. Advocates

Court Assistant Chrispo Aura