



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 498 OF 2016**

**JOSEPH AYORA OMWENA.....CLAIMANT**

**VERSUS**

**MULTISCOPE CONSULTING ENGINEERING LIMITED.....RESPONDENT**

**RULING**

1. The applicant in the Notice of Motion application dated 2<sup>nd</sup> August, 2021 prays for an order in the following terms:-

(1) Spent.

(2) Spent

(3) The Honourable Court be pleased to review and/or vary its ruling of 8th July, 2021 particularly on the conditions for stay and order that the Respondent/Applicant furnish a bank guarantee for 50% the judgment sum or in the alternative, the Respondent/Applicant deposit in the joint interest earning account between the parties' advocates 50% of the judgment sum within 30 days of the ruling and the requirement to pay the claimant/Respondent 50% of the decretal sum be and is hereby vacated.

4. Such further or other Orders as this Court may deem just and fit.

2. The application is premised on grounds set out on the face of the

Application and in the supporting affidavit of Engineer Samuel N. Mugo, the Managing Director of the respondent in which it is stated that the Court has jurisdiction to review its own orders in terms of Rule 33(1) (a) to (d) of the Employment and Labour Relations Court (Procedure) Rules, 2016.

3. That there is a mistake or error apparent on the face of the ruling of the Court in that it directs 50% of the decretal sum to be paid and 50% to be deposited in a joint interest earning account in the name of the advocates for the parties before costs have been taxed.

4. That the decretal sum is inclusive of the statutory deductions which are not yet due for payment to the respondent since there is an appeal pending.

5. That there was no affidavit of means filed by the claimant for the Court to conclude that the claimant/respondent was not a man of straw as the Court found in its ruling.

6. That the applicant is not in a financial position to meet both conditions of stay granted and there is a real likelihood of paralysis of its operations in view of the COVID- 19 hardships experienced by the applicant.

7. That the Court be pleased to review its orders and vary them to give effect to the just, expeditious, proportionate and affordable resolution of the appeal.

8. The application is opposed vide a replying affidavit of the claimant/respondent and grounds of opposition filed by counsel for the claimant.

9. The claimant states that no grounds for review of the ruling of the Court in terms of Rule 33(1) (a) to (d) of the Employment and Labour

Relations Court (Procedure) Rules, 2016, have been disclosed in the application.

10. That the applicant is in default of the Ruling of the Court and execution of the judgment is therefore due.

11. That this application is but a delaying tactic to hinder the claimant from enjoying the fruits of his judgment.

12. That the right of stay pending appeal has been overtaken by events, the applicant having failed to comply with the conditions of stay within 30 days as directed by the Court.

13. That the application is an abuse of Court process and it be dismissed with costs.

14. The parties filed written submissions which the Court has considered together with the competing depositions by the parties.

15. The Court is satisfied that none of the requirements for review of a judgment or ruling of a Court in terms of Rule 33(1) (a) to (d) of the Employment and Labour Relations Court (Procedure) Rules, 2016 have been satisfied by the applicant.

16. The applicant states that there is a mistake or error apparent on the face of the ruling and that the ruling requires clarification which assertion has not been sufficiently demonstrated by the applicant.

17. Indeed, the application faults the finding of the Court on a point of mixed facts and law, which matter if indeed valid ought to be a subject of appeal by the applicant and not seek the Court to revisit its own decision.

18. The applicant who is in default of the conditions for stay set out in the ruling of the Court surreptitiously wishes to have a second bite on the cherry.

19. The application clearly is devoid of any merit and is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 16<sup>TH</sup> DAY OF DECEMBER, 2021.**

**Mathews N. Nduma**

**Judge**

**Appearances**

Wekesa & Simiyu Advocates for the respondent/applicant

Wilfred Babu & Co. Advocates for the Claimant/Respondent

Ekale – Court Assistant