



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 257 OF 2015

(Before Hon. Justice Mathews N. Nduma)

MONICAH WANJIRU MWANGI.....CLAIMANT

VERSUS

TRANS MATTRESSES LIMITED.....RESPONDENT

RULING

1. The application dated 30th August 2019 and filed on even date prays for an order inter alia for review of the judgment and orders of the court delivered on 9th July 2019 and that the firm of Muli and Company Advocates be granted leave to come on record on behalf of Respondent in place of Omweno and Company Advocates.
2. The application is based on new matters that were neither raised or canvassed during the hearing of the suit to wit:
 - i. The court lacks jurisdiction to entertain the claim since the cause of action arose in the year 2010 and the same was filed in Employment and Labour Relations Court in the year 2015 beyond limitation period.
 - ii. The benefits awarded from a CBA dated 2017 did not apply to the claimant.
3. The application is opposed by a replying affidavit sworn to by the claimant on 9th September 2019 and filed on 18th September 2019 in which she states that the suit was initially filed before Kitale Chief Magistrates Court on 18th March 2010 and the cause of action arose on 11th January 2010 when the claimant was dismissed from employment.
4. That the suit was transferred by consent of the parties vide Kitale High Court Miscellaneous Civil Application NO. 38 of 2014. Upon transfer, pleadings were amended and the matter proceeded to trial before Employment and Labour Relations Court Kisumu, being Cause No. 257 of 2015.
5. That issue of jurisdiction was never raised. The matter proceeded to trial and judgment was delivered on 9th July 2019.
6. The Applicant's counsel executed a consent letter to correct errors in the judgment of the court on 27th July 2019 and the consent was filed on 29th July 2019. The consent documents are attached to the application.
7. That the issues now raised by the applicant could only be dealt with if at all on appeal. That the application be dismissed for lack of merit.
8. Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules 2016, provides:

“a person 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 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”

9. The application before court does not qualify under any of the provisions of this rule. What is being raised is an issue of limitation which is clearly misconceived since the suit was filed on time before the Chief Magistrates Court at Kitale and the same was correctly transferred to this court by consent of the parties.

10. Secondly, a challenge on the substantive award in the judgment may only be done to an appellate court and not the trial court.

11. The applicant wants a second bite on the cherry. The application is dismissed for lack of merit.

Ruling Dated, Signed and delivered this 5th day of March, 2020

Mathews N. Nduma

Judge

Appearances

Muli and Company for Respondent/Applicant

Samba and Company for Claimant/Respondent

Chrispo – Court Clerk