



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 310 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 21st May, 2019)

JOSEPHAT NYAKERIGA ASIAGO.....CLAIMANT

VERSUS

GUARDEX SECURITY SERVICE LIMITED.....RESPONDENT

RULING

1. The Application before Court is dated 9th November, 2018, seeking for Orders that:-

- 1. The Honourable Court be pleased to re-examine the records of the Claimant's claim dated 3rd March, 2014, and filed on the same day herein;***
- 2. That this Honourable Court be pleased to suspend and/or set aside the determination with respect to dismissing the Claimant's Claim as the grounds to which the determination was made are erroneous.***
- 3. That the Honourable Court does revise, review, and set aside the determination of the Court made on the 12th October, 2018; dismissing the Claimant's claim.***

2. Which Application is premised on the grounds that:

- i. The Claimant filed the Claim for salary arrears and for compensation from injuries on 3rd March, 2014.***
- ii. The Claimant had tried the office of Director of Occupational Health and Safety for assessment of compensation for Injuries in the workplace, who declined to assess citing his inability that the matter was already in Court for adjudication and his input would amount to duplication.***

3. The Application is supported by the Claimant's affidavit wherein he states that the statement of Claim outlined only 3 arms or issues on the sub-heading ISSUES IN DISPUTE as:-

- i. The Claimant got injured while on lawful duty at the Respondent's assignment and as a consequence he was admitted in hospital for treatment and management of the injuries sustained.***
- ii. However, the Respondent neglected and abandoned the Claimant in the hospital with the unpaid medical bill.***
- iii. Further, the Respondent stopped paying or at all remitting monthly salary and/or periodical payments to the Claimant.***

4. That in paragraphs 12 and 13 of the Memorandum of Claim he outlined what had not been paid to him as salary because the Respondent stopped to remit salary for the entire period he was in hospital. That he proceeded to the Director of Occupational Health and Safety for assessment of compensation for injuries in the workplace, who declined to assess citing his inability since the matter was already in Court for adjudication and his input would amount to duplication.

5. The Respondent filed grounds of opposition opposing the Application stating that an application for review ought to correct typographical errors on the face of the judgment. They also contend that an application for review does not warrant the Court to reassess or re-evaluate evidence adduced in the lower Court as this is the duty of an appellate Court.

Claimant's submissions

6. In addition to what is contained in the supporting affidavit the Claimant is of the view that Section 34(1) of the Employment Act, 2007, places an obligation on an employer to ensure the provision of sufficient medicine for employees during illness and if possible medical attendance.

7. That Order 45(1) of the Civil Procedure Rules sets out the requirements of an application for review, which in the Claimant's view is of mere procedural significance as provided under Article 159(d) of the Constitution 2010.

8. He prays for the Court to suspend/set aside the determination with respect to dismissing the Claimant's Claim, as the grounds to which the determination was made are erroneous and allow the Claimant's prayers as itemised in the Memorandum of Claim.

9. I have examined all the averments of the parties herein. The application by the Claimant is for review of this Court's orders and judgement dismissing his case dated 12.10.2018.

10. Rule 33(1) of the (ELRC) Employment & Labour Relations Court Rules 2016 provide for instances under which this Court can review its orders or decrees as follows:-

1) "A person who is 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 and 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.

11. The instances as listed above will relate to discovery of new or important matter, an apparent error on record, clarification of judgement or for any other sufficient reasons.

12. In the application by the Claimant, herein the Applicant has not pointed out why he wants this Court to review its judgement. He points out however that there is an error on record, which he wants corrected. The error in question is not stated.

13. In the circumstances, I find the application before me not merited. I decline to review the judgement as prayed and I dismiss the application accordingly.

Dated and delivered in open Court this 21st day of May, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Onwanga holding brief C. K Areba for Applicant – Present

Wanjara holding brief Namiinda for Respondent – Present