



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

SUIT NO. 230 OF 2017

KENYA UNION OF COMMERCIAL FOOD &

ALLIED WORKERS (KUCFAW).....CLAIMANT

VERSUS

GAKUYU FARMERS CO-OPERATIVE SOCIETY LIMITED....RESPONDENT

**RULING**

1. The Claimant/Applicant seeks review of the decision of the court as it is stated that the court failed to consider the CBA in existence at the time. Review is provided for under Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016. A review of judgment can be sought within a reasonable time:

*33.(1)(a) if there is discovery of a new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of that person at the time when the decree was passed or 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.*

2. In order to determine whether there are grounds for review, the court has to consider the grounds advanced for the review sought to see if they fit within the prism of Rule 33. The decision of the court at the material part which appears at page 5 of the Judgment was as follows:-

*The CBA had not taken effect at the time of the payments made to the Grievants and because they are no longer staff of the Respondent they are not covered by the CBA for the period 2014/2016 which was implemented after their dismissal.*

3. The decision of the court therefore was after consideration of the matters germane to the CBA. It was not ignored or overlooked. It was considered and a determination made that it was not applicable. There is therefore no basis for the review sought as there is neither an error on the face of the record or any sufficient reason to warrant a review. If the Claimant felt aggrieved that the court did not grant a relief they feel they were entitled to by misapprehending the evidence adduced or the import of the same, an appeal would be the correct forum to litigate the issue and not a review. See the case of **National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR** where the court held:

*A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."*

4. The foregoing is clear evidence that the Claimant's motion is not merited and is accordingly dismissed with costs.

It is so ordered.

**Dated and delivered at Nyeri this 12<sup>th</sup> day of July 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a

true copy of the Original

**Deputy Registrar**