

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA AT NYERI

CASE NO. 166 OF 2015

(As Consolidated with Cause No's. 167, 168, 169, 170, 171, 172, 173 & 174 all of 2015)

ALI KULO GODANA & 8 OTHERS.....CLAIMANTS/APPLICANTS

VERSUS

JIANGXI ZHONGMEI ENGINEERING

CONSTRUCTION COMPANY LIMITED.....RESPONDENT

RULING

1. The Notice of Motion application before me is the Claimant/Applicant's application dated 14th January 2019 and filed on 22nd January 2019 seeking a review of the court's decision made on 13th December 2018 which rejected the Claimants/Applicants' motion to have the matters referred back to the Taxing Master for re-taxation. The Applicants' argue that it is not the court's order of 18th January 2018 that was subject of the application of 13th December 2018 but the Deputy Registrar's Ruling of 9th April 2018.

2. The motion is opposed and the Respondent filed a replying affidavit sworn by Zhang Jiaying a project administrator of the Respondent. He deposed that the motion before court was hopelessly out of time as a reference ought to have been filed within 14 days of the taxation.

3. The motion by the Claimants must fail. The attempt to re-litigate the already determined issue on the reference is *res judicata* and the decision of the court in relation to the impugned reference is final. *Res Judicata* is the Latin term for a matter already judged. In this context, *res judicata* refers to the legal doctrine that seeks to bar or preclude continued litigation of a case on same issues between the same parties. There is no basis to grant the Claimants leave to file a reference out of time whichever way they try to slice it as this matter of taxation has been adequately litigated. There is estoppel against the Claimants from litigating the matter afresh. The present application is therefore an abuse of the court process and a total waste of judicial time and only fit for dismissal with costs to the Respondent. Application dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Nyeri this 3rd day of July 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar