



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CASE NO. 263 OF 2016

(Before Hon. Justice Mathews N. Nduma)

CAR AND GENERAL TRADING LIMITED.....APPLICANT/RESPONDENT

VERSUS

IBRAHIM KONES.....CLAIMANT/RESPONDENT

RULING

1. Judgment was delivered on 20th December 2018. The respondent/applicant filed a Notice of Motion application for review of the judgment of court in which the claimant was awarded payment in lieu of 49 days leave. The Applicant states that its records show that the claimant had only 7 days outstanding leave. That the claimant/respondent did not adduce evidence that it was owed 49 days as set out in the statement of claim. That records before court show that the claimant was only owed 7 days leave. That the judgment be reviewed accordingly.

2. The claimant/respondent opposes the application for review in which he admits he was granted payment in lieu of 49 leave days as prayed. That the claimant presented evidence that was not challenged that he was owed in lieu of 49 days leave. That no approved leave forms were produced to counter act that claim. That the application is devoid of merit and it be dismissed.

Determination

3. The court is satisfied that CW1 testified before court under oath that he had 49 outstanding leave days and claimed payment in lieu thereof. The claimant was cross examined on the matter by counsel for the respondent/applicant and the claimant stood his ground on the matter. RW1, Maximila Mutuku did not tender any evidence to counter act this claim by the claimant.

4. In terms of *Rule 33 of the Employment and Labour Relations Court (procedure) Rule, 2016*, a person who is aggrieved by a judgment of the court may Appeal the decision or apply for a review of the decision.

(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 evidence 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 of

(d) For any other sufficient reason"

5. It is the court's considered finding that the applicant has not satisfied any of the requirements under Rule 33 of the court rules to warrant review of the judgment of the court.

6. Accordingly, the application lacks merit and is dismissed with costs.

Ruling Dated, Signed and delivered this 5th day of December, 2019.

Mathews N. Nduma

Judge

Appearances

Mr. Kabiru for Respondent/Applicant

Mr. P.D Onyango for Claimant/Respondent

Chrispo – Court Clerk