



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE 2292 OF 2014**

**WILLIAM MALII MWANZIA.....CLAIMANT**

**VERSUS**

**GENERAL MOTORS EAST AFRICA LIMITED.....RESPONDENT**

**RULING**

1. The court has reviewed and considered the application dated 14<sup>th</sup> July, 2017 brought by the respondent and will exercise its discretion against the respondent and dismiss the same with costs without going into the merits of the said application. The reason why court has taken this drastic and summary approach is after following chronology of events in this matter which are as follows;

2. On 4<sup>th</sup> March, 2015 Honourable Justice Wa Makau in a considered ruling granted the claimant's application dated 23<sup>rd</sup> December, 2014 after inter partes hearing. The order made by the learned Judge was that, a temporary injunction was granted restraining the respondent from retiring the claimant pending the hearing and determination of the claim.

3. The respondent on 18<sup>th</sup> March, 2015 filed a Notice of Appeal against that ruling. On 28<sup>th</sup> April, 2015 the respondent in spite of having filed Notice of Appeal and the same remaining unwithdrawn filed an application for review of the ruling.

4. This application for review was withdrawn by consent of the parties on 14<sup>th</sup> April, 2016 and Ms Jakaita informed the court that the respondent would pursue the issues raised in the review application at the hearing of the main claim.

5. The court consequently recorded that consent on withdrawal and directed that the parties herein set the suit down for hearing at the registry at their convenience. Over one year later from the date of the consent and over three years from the date of the ruling by Justice Wa Makau, the respondent on 14<sup>th</sup> July, 2017 yet again filed the present application seeking the setting aside of the ruling delivered on 4<sup>th</sup> March, 2015 and striking out of the claim herein.

6. This is totally unacceptable use of the court process, a total waste of judicial time and a glaring attempt by the respondent to delay the speedy disposal of the claimant's claim. The court cannot sit back and let his happen more so when the respondent's counsel had represented that they would abandon the review application and canvas the issues therein at the main trial.

7. The application dated 14<sup>th</sup> July, 2017 is therefore struck out with cost as an abuse of the court process.

8. It is so ordered.

Dated at Nairobi this 2<sup>nd</sup> day of March 2018

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 2<sup>nd</sup> day of March 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent.