



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 266 OF 2013

(Before Hon. Justice Mathews N. Nduma)

1. SETH ATIANYI INGAIRU

2. GEOFFREY OBADO NGESA.....CLAIMANTS

VERSUS

ECO-BANK KENYA LIMITED.....RESPONDENT

R U L I N G

1. The applicant seeks the court to review the Judgment delivered on 3rd December, 2014 and award the 1st Claimant gratuity and costs of the application.

2. The application was filed on 1st December, 2017 three (3) years after the judgment was delivered.

3. The application is opposed on the following grounds:-

(i) There has been inordinate delay in bringing the application.

(ii) The requirements that guide review of judgments have not been met.

(iii) The matter is resjudicata.

4. In the case of **Utalii Transport Company Limited & 3 others v NIC Bank Limited & Another [2014]3KLR** Justice Gikonyo stated –

“whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case, the nature of the case, the explanation given for the delay and so on and so forth. Nevertheless inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, in excusable.”

5. This application was brought three (3) years from the date the judgment was delivered. No explanation was given for that delay in the Notice of Motion. Looked at from the perspective of the limitation period placed on Employment and Labour matters under section 90 of the Employment Act, 2007 which

is three (3) years, the delay of three years before bringing an application to review a judgment is indeed inordinate and the court finds so.

6. Secondly, the applicant states that there was an error apparent on the face of the record that the applicant having worked for 20 years and the policy of the Respondent that employees who work for 10 years and above are entitled to gratuity.

7. There is no explanation at all in the Notice of Motion and the supporting affidavit how failure to award the applicant gratuity was an error on the face of the record. It is not apparent that this was a fact made known to the trial judge, but had inadvertently overlooked the same.

8. A perusal of the judgment itself in the absence of any deposition by the applicant does not make alleged error apparent at all.

9. The applicant bears the onus of proof, and has failed to discharge that onus.

10. The application is dismissed with costs for the reason that the requirements for review of the judgment have not been met and that the application was filed after inordinate delay.

Ruling Dated, Signed and delivered this 12th day of April, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Mwamu for Claimants/Applicant

Mr. Kimani for Respondent

Chrispo – Court Clerk