



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. 9 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

PETERSON WACHIRA AND GEORGE GIBORE

(Suing on behalf of themselves and of Clinical Officers).....**APPELLANTS**

VERSUS

REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

AND

KENYA UNION OF DOMESTIC

HOTELS EDUCATIONAL INSTITUTIONS AND

HOSPITAL WORKERS (KUDHEIHA WORKERS)....1ST INTERESTED PARTY

UNION OF KENYA CIVIL SERVANTS.....2ND INTERESTED PARTY

RULING

Before me for determination is a notice of preliminary objection dated 11th July 2018. The notice is filed by the appellants against the application dated 22nd June 2018 by the 2nd Interested Party.

The objection is on grounds that –

1. The court has no jurisdiction to review a second time its judgment; the court is *functus officio*.
2. The said notice of motion is barred by the *res judicata* doctrine.
3. The doctrine of finality of litigation bars the applicant from making the said application.

The appellants filed the appeal herein challenging the decision of the Registrar of Trade Unions refusing to register the Kenya Union of Clinical Officers. The court declared the decision by the Registrar of Trade Unions unlawful, null and void and proceeded to order the Registrar to register the union. The court further made orders that “*The appeal is allowed with costs to follow the outcome.*”

The appeal was opposed by the 2nd respondent and two Interested Parties. The respondents thereafter filed a bill of costs. When the parties appeared before the Deputy Registrar for taxation of the bill of costs, there was a contention on who should pay costs as between the respondents and Interested Parties. The Deputy Registrar referred the matter for mention before the Judge. When the parties appeared before the Judge on the date of mention, he stated as follows after the parties addressed him –

“*Judgment specific and clarifies, the losers bear the costs of the appeal.*”

The appellants argue in their submissions in support of the preliminary objection that the application dated 22nd June 2018 filed by the 2nd Interested Party is a second review and is *res judicata*. Both Interested Parties submit that it is not.

The issue for determination is therefore whether what transpired in court on 27th September 2017 when the parties appeared before the Judge to clarify the order on costs constitutes a review thus making the application dated 22nd June 2018 a second review and therefore *res judicata*.

Rule 33 of the Employment and Labour Relations Court Procedure Rules 2016 is clear on what constitutes a review. Rule 33(2) and (3) state as follows–

(2) An application for review of a decree or order of the Court under subparagraphs (b), (c) or (d), shall be made to the Judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station.

(3) A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or Ruling or order to be reviewed.

There was no application for review in terms of Rule 33 before Judge Nduma when the parties appeared before him on 27th September 2017. I therefore find no merit in the preliminary objection filed by the appellants and dismiss the same.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 19TH DAY OF OCTOBER 2018

MAUREEN ONYANGO

JUDGE