



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

SUIT NO. 95 OF 2013

ERASTUS GITONGA BURINI.....CLAIMANT

VERSUS

KENYA NUT COMPANY LIMITED.....RESPONDENT

RULING

1. The Respondent/Applicant seeks to review the consent of parties entered into in the suit. The consent was entered into on 3rd October 2017 and a judgment of the court given in November 2017. In matters review, the provisions of Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016 apply. The rule provides as follows:-

33. (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

(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 decree 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; or

(d) for any other sufficient reason.

(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.

(4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.

(5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(6) An order made for a review of a decree or order shall not be subject to further review.

2. The motion before me is one made after the judgment of the court in relation to a consent entered into prior to the decision. It is therefore overtaken by events as there is a valid judgment on the court file which decision is not subject of the review being sought. In any event, the review does not fit into any of the categories enumerated above. The motion is accordingly dismissed and as the motion was undefended I will make no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 19th day of November 2018

Nzioki wa Makau

JUDGE