



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 483 OF 2013

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS.....CLAIMANT

v

NAIVAS LIMITED..... RESPONDENT

RULING

1. For determination is an application dated 12 April 2018 by the Kenya Union of Commercial, Food and Allied Workers (Union) seeking orders

1. ...

2. The orders of the Honourable Court issued on 5/4/2018 dismissing the Claimant/Applicant's application dated 26th March, 2018 for non-attendance be and is hereby set aside.

3. The application be heard on merit on priority and on such date the Honourable Court may fix.

4. ...

5. ...

2. The reason advanced in support of the application is that the Union's advocate was late due to traffic and that the failure to attend Court was beyond his control.

3. Just for purposes of record, the application dated 20 February 2018 had sought review of a judgment delivered on 17 July 2015.

4. The Court has considered the application, the affidavit in support thereof, the oral submissions made in Court and keenly perused the record.

5. As Makau Onesmus J noted on 20 February 2018 when certifying the dismissed application urgent, the Cause was a closed matter and the issues sought to be litigated upon raised new causes of action meriting a fresh suit.

6. It is correct that the Issues the Union are seeking to advance through the review application all occurred after the judgment date, and allowing the same to be litigated under this Cause will only lead to confusion as to the proper cause of action and hence wastage of judicial time.

7. This Court raised the same concerns with the Union's advocate but he insisted that the Court ought to hear the application and give directions.

8. The record also shows the application sought to be revived had not been served as there is no affidavit of service on record. The failure to serve means that the application may have been adjourned or dismissed for failure to serve.

9. It is not lost to the Court that the Union was seeking to review a judgment some 3 years post-delivery.

10. From the record, the Court finds the instant application lacks merit, is frivolous and vexatious and orders its dismissal with no order as to costs.

