



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 301 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENYA NATIONAL UNION OF NURSES.....CLAIMANT

VERSUS

THE COUNTY PUBLIC SERVICE BOARD HOMABAY.....RESPONDENT

R U L I N G

1. Application dated 15th February, 2018 and filed on even date seeks review of the ruling by Hon. Lady Justice Maureen Onyango delivered by myself on 22nd December, 2017 on the grounds set out in the Notice of Motion on grounds that the court erred in law and fact in its ruling at paragraph 4 & 5 of the ruling in stating-

“I agree with the Respondent that there is no evidence of the authority to deduct union dues from the salaries of its members which under section 49 of the Act should be in form ‘S’ commonly referred to as the check off form.”

2. Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016, under which this application is brought reads –

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.

b. On account of some mistake or error apparent on the face of the record.

c.

d. For any other sufficient reason

3. The application is opposed vide a replying affidavit by the Respondent filed on 6th March, 2018.

4. The basis on which the review is sought is a finding of law and fact at page 5 of the ruling to the effect that there was no evidence adduced by the Applicant showing that Respondent had authority to deduct union dues from its employees by way of a “Check Off Form” duly filed, submitted and authorized by the Minister in terms of section 49 of the Labour Relations Act, 2007.

5. This as the Applicant correctly puts it was a finding of fact and law by the Hon. Judge. This finding may only be challenged by an Appeal to the Court of Appeal.

6. The Applicant cannot invite this court to make a contrary finding of fact and law to that already made by the trial Judge. This is wanting to have a second bite on the cherry as it were through the back door.

7. It is the court’s finding that no valid grounds have been disclosed by the Applicant to warrant review or setting aside of the ruling by Hon. Maureen Onyango delivered on 1st February, 2018.

8. Disputes of fact and law in this matter may however be canvassed and concluded in the main suit in which similar prayers as were sought

in the dismissed application are made.

Dated, Signed and Delivered in Kisumu this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. John Karakacha for Claimant/Applicant

Mr. Nyauke for Respondent

Chrispo – Court Clerk