



REPUBLIC OF KENYA
IN THE EMPLOYMENT LABOUR AND RELATIONS COURT

AT MOMBASA

CAUSE NO. 444 OF 2014

**KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL AND ALLIED
INSTITUTIONS WORKERS UNION.....CLAIMANT**

VERSUS

KENYA MARINE AND FISHERIES RESEARCH INSTITUTE.....RESPONDENT

RULING

Introduction

1. On 25.9.2015, I delivered judgement herein by which I dismissed the claimant's suit with costs. On 6.10.2015, the claimant lodged a notice of appeal challenging the whole judgement. However on 1.4.2016, the claimant brought the current Notice of Motion basically seeking:-

- a. Setting aside of the judgement dated 25.9.2015
- b. Disqualification of the trial judge from this application.

2. The notice of motion is supported by the affidavit of Mr. Martin J. Odour and a Review on Recognition dated 30.3.2016. The grounds upon which the motion stands are that:-

- a. The sitting judge had an interest in his judgement.
- b. The judgement favoured the interested party.
- c. The judgement in 353 of 2011 was not applicable in this dispute.
- d. The unionisable employee who joined the claimants were being deducted union dues twice.

3. The respondent did not participate in the motion but the interested party apposed the motion for lack of merits vide her response dated 16.5.2016. The motion was disposed of by written submissions.

Analysis and determination

4. The issues for determination is whether the motion has merits and should be allowed.

Merits.

Disqualification of the trial judge.

5. Apart from stating on the body of the motion that the trial judge had an interest in the judgement, no effort was made by the claimant to substantiate that allegation. The requests for my recusal from this motion is therefore without merits and is dismissed.

Setting aside judgment.

6. The main reasons for the request to set aside judgement are that the court was biased, it did not satisfy the desire of the claimant; and the court failed to consider some relevant evidence or memorandum that was filed by the claimant. Simply put the claimant is contending that the court made an error on judgement. That contention goes to the merits of the impugned judgement which properly lies on appeal.

7. Having done my best in evaluating the evidence and the law I made a judgement on merits on 25.9.2015 and became functio officio. I can only be invited to review the judgement if the said jurisdiction is properly invoked. In this case, it was not because the notice of motion was not brought under Rule 32 of the court's rules of procedure citing any ground for the intended review. Consequently, the request for setting aside the impugned judgement is declined for lack of merits.

Disposition

8. The notice of motion dated 30.3.2016 is dismissed with costs to the interested party.

Signed, dated and delivered at Mombasa this 13th day of January, 2017

O.N. MAKAU

JUDGE