



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

CAUSE NO. 1916 OF 2015

[FORMERLY MERU HCC NO 159 OF 2009]

FRANCIS BUNDI KIMATHI.....CLAIMANT

VS

NATIONAL SECURITY INTELLIGENCE SERVICE.....RESPONDENT

RULING

1. On 2nd September 2016 I delivered a judgment in which I dismissed the Claimant's claim with no order for costs.
2. The Claimant subsequently filed an application dated 13th September 2016 seeking review of the judgment. The Respondent filed grounds of opposition on 1st December 2016.
3. In his supporting affidavit sworn on 13th September 2016 the Claimant depones that the judgment had ignored evidence adduced before the Court.
4. In its grounds of opposition dated 29th November 2016 and filed on 1st December 2016, the Respondent states that the Claimant's application is an abuse of the court process as it disputes the entire judgment of the Court. The Respondent adds that the grounds relied on are grounds for appeal and not review.
5. The power of the Court to review its own decisions is donated by Section 16 of the Employment and Labour Relations Court Act and Rule 33 of the Procedure Rules. Rule 33(1) provides as follows:

(1) A person who is aggrieved by a decree or an order of the Court may apply for a review of the award, 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; or

(b) on account of some mistake or error apparent on the face of the record; or

(c) on account of the award, judgment or ruling being in breach of any written law; or

(d) if the award, judgment or ruling requires clarification; or

(e) for any other sufficient reasons.

6. The Claimant's application is grounded on his assertion that the Court failed to take into account his evidence on record. If that be the case, the Court would have misdirected itself on the law and facts. Such an error can only be corrected on appeal and not on an application for review.

7. To entertain the Claimant's application would amount to the Court sitting on appeal over its own decision which it has no power to do. The application dated 13th September 2016 is therefore dismissed with no order for costs.

8. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF
MARCH 2017**

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JUDGE

Appearance:

Francis Bundi Kimathi (the Claimant in person)

Mr. Soita for the Respondent