



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 219 OF 2015

(Before D. K. N. Marete)

KENYA UNION OF EMPLOYEES OF POLYTECHNIC,

COLLEGES AND ALLIED INSTITUTIONS (KUEPCAI).....APPLICANT

VERSUS

THE BOARD OF MANAGEMENT,

ILMOTIOOK SECONDARY SCHOOL.....RESPONDENT

RULING

This is an application for review dated 17th August, 2017. It seeks the following orders;

- 1. Claimant herein lodged this dispute in Cause No. 219 of 2015 within the meaning of mandatory provisions of Section 73 of the Labour Relations Act, No. 14 of 2007, Section 12 of The Industrial Court Act, No. 20 of 2011 and Rules 4, 16 and 27 of The Industrial Court (Procedure) Rules, 2010, Laws of Kenya, in anticipation of a duly fairly and justified arbitration from this very Honourable Court of record.*
- 2. The Employment and Labour Relation Court of Kenya, within her jurisdiction has the authority and powers to review its own judgement, awards, orders or decrees, based on the application by either party, filed in the Honourable Court, within the meaning of mandatory provisions of Section 16 of The Industrial Court Act No. 20 of 2011 and Rule No.32 of the Industrial Court (Procedure) Rules, 2010, Laws of Kenya.*
- 3. The genesis of this application for review by the Applicant herein is premised on the judgements of this Honourable Court delivered in the open Court, dated and signed on 3rd June, and 19th July, 2016, respectively, that unfairly and unjustly was in favour of the Respondent, which indeed subjugated the tenets of mandatory provisions of Section 16 of The Industrial Court Act, No. 20 of 2011, Rule No. 32(1) and (2) of the Industrial Court (procedure) Rules, 2010, and Section 3 of the Judicature Act, Chapter 8, Laws of Kenya.*
- 4. The applicant herein did file its Memorandum of Claim dated 28th July, 2015 under a Certificate of Urgency in this Honourable Court on 30th July, 2015 within the meaning of mandatory provisions of Section 12(3) of The Industrial Court Act, 2010, Laws of Kenya*

The Respondent in the Respondents Response to the Memorandum in Support of Review 5th September 2016 faults the application and prays that the same be dismissed with costs.

In her written submission, the Claimant/Applicant bases his application on the basis of the conduct of his case at trial and also that the judgement of court has unfairly and unjustly tilted in favour of the respondent. She therefore goes on to enumerate various reasons that make the judgement not sound in law.

The Respondent in her Respondent's Response to the Memorandum in Support or Review contends that the application is incompetent and misplaced for lacking the *bona fides* and substance for review. It is her further submissions that the application does not disclose any matters for review but instead bellows out issues that ought to be addressed at appeal. She therefore sought to rely on her nineteen pointed response in a demonstration that the application for review is not meritorial.

This application lacks form and substance. It does not display any tenets of review as enunciated under rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. It does not imbue clarity or seriousness but appears to have been initiated for the sake of it. It is an abuse of the process of court and should be discouraged entirely. I am therefore inclined to dismiss the application with costs to the respondent.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Japhet Agura for the Claimant union
2. Mr. Mwangi instructed by Lawrence Mwangi and Mwangi Advocates for the Respondent.