



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO.43 OF 2015**

**KUDHEIHA WORKERS.....CLAIMANT**

**VERSUS**

**KANGEMA HIGH SCHOOL.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Thursday 25<sup>th</sup> May, 2017)**

**RULING**

The application is filed for the respondent on 16.03.2017 through Kimwere Josphat & Company Advocates. The application invokes Rule 32, Employment and Labour Relations Court (Procedure) Rules. The application is based on the supporting affidavit of Gibson Mwangi Chege. It seeks the review of the decree in the suit issued on 25.10.2016 and consequential to the review, order 2 in the decree be set aside to the extent that Stephen Mwangi Njoroge is not awarded Kshs.48, 576.00 being 6 months salaries in compensation for unfair termination. The applicant filed the further supporting affidavit of Gibson Mwangi Chege on 18.04.2017.

The decree was by consent and flowing from the consent filed in court on 21.07.2016 and dated 19.07.2016.

The main ground for review is that the said Stephen was paid during the period of interdiction from 04.11.2008 to 31.12.2009 and he admits receiving the payment.

The claimants have opposed the application by filing the affidavit of Stephen Mwangi Njoroge on 27.04.2017. It is urged that the decree by consent of the parties should not be varied in any manner because it was not obtained by fraud or mistake. It is urged that the 6 months' compensation was agreed upon due to the long period of time that lapsed before releasing the retirement benefits to the claimants and the parties were alert to the issue and circumstance of interdiction of Stephen Mwangi Njoroge as at the time of the agreement. That since there are no new issues, the application for review should fail.

The court has considered the parties' submissions. There is no doubt that a valid consent was arrived at and the applicant has not established such factor that would vitiate a contract to justify variation of the decree arrived at by consent of the parties. In any event, there is no reason advanced that links the issue of interdiction to the issue of compensation. The court returns that there is no reason to doubt the claimant's submission that the agreement on the 6 months' pay for compensation was founded upon the respondent's inordinate delay in releasing the grievants' terminal benefits which was an unfair labour practice and which in the parties' own negotiations constituted an element of unfair termination. The agreement and the ensuing decree by consent of the parties will therefore stand.

In the circumstances, the application will fail.

In conclusion the application for review filed for the respondent in the suit on 16.03.2017 is hereby dismissed with costs.

**Signed, dated and delivered in court at Nyeri this Thursday, 25<sup>th</sup> May, 2017.**

**BYRAM ONGAYA**

**JUDGE**