



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE NO. 372 OF 2015
(FORMERLY KISUMU HCCC NO. 32 OF 2014)
(Before Hon. Lady Justice Maureen Onyango)

WILLIS OGOLA OKENDO PLAINTIFF

-Versus-

COLLINS OYUU 1ST DEFENDANT

GILBERT NDOLO OWUOR 2ND DEFENDANT

CLEMENT OMOLO 3RD DEFENDANT

KENYA NATIONAL UNION OF TEACHERS (KNUT).... 4TH DEFENDANT

RULING

Judgment in this case was delivered on 24th November 2016. By application dated 6th December 2016, the Applicant/Plaintiff applied for review of the judgement on the following grounds-

1. I filed this case on 23 September 2014 at the High Court at Kisumu.
2. On 25th November 2014 when the hearing date was to be taken, All the four Defendants failed to appear and they had not served the plaintiff with copies of their defence and other papers as required by the Civil Procedure Law and this was after 105 days had elapsed.
3. On 8th January 2015 the plaintiff filed application for request of Judgment order as stated in Order 10 rule 3 for failure of all the 4 defendants to serve the plaintiff, and Judgement was entered for plaintiff against the 1st, 2nd and 3rd defendants but the Court favoured the 4th Defendant who was the overall. It is true that the plaintiff filed a reply to the 4th Defendant's Defence but this I did because I am a layman and I wanted to know what was in their Defence so on 24th October I bought the 4th Defendant's Defence and I was receipted. The Defendants was to serve the plaintiff not the plaintiff to buy the papers of the Defendants.
4. Hearing Formal proof was fixed to be on 19th March, 2015 I attended but the Defendants Lawyer Mr. Sala and Mr. ken Omolo said that they were only aware of Formal proof that day. No hearing was done.

The two Lawyers requested Court to allow them file an application to be heard on 13th May, 2016. The Plaintiff was not served with a copy of their application.

5. On 13th May 2015, I went for the hearing of their application for Formal proof but all of the defendants failed to attend and up to date I don't know the fate of their application to set aside Formal proof judgement.

6. I the plaintiff was told to come for Formal proof hearing on 11th June 2015. On this day all the 4 defendants failed to attend and No action was taken against their failure to attend.

7. This Formal proof hearing was fixed again for 1st October 2016. On this day 1st October 2015 No hearing was done and the Hon. Justice Chemitei announced that the matter is transferred to Labour and Industrial Relations Court at Kisumu where hearing of Formal proof will be heard. I tried to oppose but I was not allowed to talk.

This case No.32 of 2015 was not heard at all at the High Court and even the Formal proof was not heard in the High Court, No consequence was applied by the Court for their failure to serve default of defence and Non-appearance by the defendants.

The application is supported by an affidavit of the applicant in which he deposes that he filed suit in the High Court Kisumu on 23rd September, 2014 against the 4 Defendants. He states that the 1st, 2nd and 3rd Defendants failed to enter appearance and judgment was entered against them on 25th November 2014. He further states that formal proof was done on 30th May 2016. He further states that the 4th Defendant failed to serve him with its papers in default of Order 10 of the CPA Rules. He states that he was compelled to apply for judgment review because the Judgment has no time limit and further that the judgment referred the applicant back to the Respondents to determine his case.

Determination

Review of judgements and orders is provided for under section 16 of Employment and Labour Relations Court Act and Rule 33 of the Employment and Labour Relations Court Procedure Rules. Section 16 of the Act provides that the court has power to review its judgments, awards, orders or decrees in accordance with the rules while Rule 33 provides as follows-

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) 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;

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

(c) if the judgment or ruling requires clarification; or

(d) for any other sufficient reason.

(2) An application for review of a decree or order of the Court under sub-paragraphs (b), (c) or (d), shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station.

(3) A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or Ruling or order to be reviewed.

(4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.

(5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(6) An order made for a review of a decree or order shall not be subject to further review.

In the present application the reasons given by the applicant for review appear to be that the court failed to give a time limit within which the 4th Respondent should discuss the claimant's request for payment of old age allowance. The applicant has also taken issue with the failure of the High Court to act on his request for judgment that he filed in the High Court. He further complains about discrimination by this court and about many other issues as may be discerned from his grounds for review as reproduced above.

The court appreciates that the applicant is a layman of advanced age and may not be able to distinguish between issues that are complaints, those that are subject of appeal and those that may properly be grounds for review.

It is the court's opinion that the application as filed is so ambiguous as to render it incapable of being dealt with as an application for review. None of the prescribed grounds for review are cited in the application. The application contains elements of complaints against this court and the High Court where the suit was initially lodged before being transferred to this court. The application also contains issues that should be subject of appeal and not review.

Due to the ambiguity of the application this court is left with no alternative but to dismiss the application on grounds that it is not a suitable case for review.

Dated and delivered in Kisumu this 4th day of May, 2017

MAUREEN ONYANGO

JUDGE