



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 423 OF 2013**  
**(Originally Nairobi Cause No. 2545 of 2012)**

**AMALGAMATED UNION OF KENYA**

**METAL WORKERS**

**CLAIMANT**

**v**

**SETTLERS ENGINEERING LIMITED**

**RESPONDENT**

**RULING NO. 2**

1. In a judgment delivered on 3 March 2017, the Court found and held that the termination of employment of Alexander George Chilain was unfair.
2. On 28 March 2017, the Respondent moved Court seeking
  1. ... (spent)
  2. ... (spent)
  3. THAT this Honourable court be pleased to review its judgment dated 3<sup>rd</sup> March 2017 and set off its award of Kshs 89,030.00 against an advance of Kshs 23,600.00 advanced by the respondent to the claimant and which sum the claimant is yet to pay to the respondent.
  4. THAT the balance thereof of Kshs 65,430.00 be settled in 6 monthly instalments.
  5. ....
3. The Union filed its objection to the application on 20 April 2017, and arguments were taken on 21 April 2017.
4. The reasons advanced by the Respondent in seeking the review are that the documents relating to the advance were misplaced by its advocate when moving offices in 2012, and that misplacement was discovered only when the Cause was being heard in 2016, and that copies of the documents have now been traced and that the advocate who conducted the hearing was not aware of the said documents.
5. Mr. Murimi who had conduct of the Respondent's case urged that the Court being a court of equity and justice should exercise its discretion in favour of the Respondent because there was no denial that an advance had been given.

6. The Union, in opposing the application urged that the reasons relied on were not sufficient and that a Court should not act as a debt collector.
7. Ms. Yambo for the Union also urged that the issue of advance had not been pleaded and that the Respondent should have filed a counter claim. The Respondent, it was submitted had not exercised due diligence and had come to court with unclean hands.
8. The counsel also opposed the prayer seeking settlement of the decretal amount in instalments.
9. The Court has considered the material placed before it and the submissions.
10. The vouchers filed indicating that advances were made to the Grievant are dated 28 October 2007, 24 December 2009, 24 December 2009, 24 December 2009, 24 November 2010, 24 December 2010, 31 May 2011, 31 March 2011 and 30 April 2011.
11. Assuming that the advances were made as part of the employment contract, any cause of action accruing therefrom should have been instituted by the Respondent within 3 years as envisaged by section 90 of the Employment Act, 2007.
12. Any such action should have been commenced by 30 April 2014.
13. In the view of the Court therefore, it is not open to the Respondent to use the back door in an attempt to get the Grievant to pay up an advance which has been caught up by the law of limitation.
14. The Court also notes that the Respondent did not file any witness statement as was directed on 12 February 2016 (Union equally did not file any witness statement). Had the Respondent complied it would have realised that early what case it intended to present in Court.
15. The Court finds no merit in the review application and orders that it be dismissed with costs to the Union.

**Delivered, dated and signed in Nakuru on this 31<sup>st</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Union	Ms. Yambo, Legal Officer, Amalgamated Union of Kenya Metal Workers
For Respondent	Mr. Murimi instructed by Murimi, Ndumia, Mbago & Muchela Advocates
Court Assistant	Nixon