



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

**AT NAIROBI**

**CAUSE NO. 776 OF 2010**

**BISANSIO OPOLO EKODOI**

**SALOME ASIO EMODO**

(Suing as Administrator and Legal representative of the estate of the late

**VITALIS EBUKORO ETYKORO.....CLAIMANT**

*VERSUS*

**WELLS FARGO LIMITED.....RESPONDENT**

**KENYA SECURITY INDUSTRY ASSOCIATION...INTENDED INTERESTED PARTY**

Mr. Namada for claimants

Mr. Ogunde for respondent

**RULING**

1. Serving before court is an application filed on 3<sup>rd</sup> November 2016 seeking the following orders:

(i) There be a stay of proceedings in this matter pending determination of this application.

(ii) The judgment and decree, made herein on the 27<sup>th</sup> of July 2016 in this suit be reviewed in so far it determines that a bullet proof vest comprises a minimum reasonable measure of protection for a guard engaged in a cash in transit assignment.

2. The application is on grounds set out on the face of the notice of motion as follows;

(i) The security industry standard in Kenya has never required provision for bulletproof vest as a minimum reasonable measure of protection for a guard engaged in Cash in Transit assignment.

(ii) Such a requirement is unparallel and not know to be applied in a vast majority of countries where there are private Cash in Transit providers.

(iii) Possession of bulletproof vests has at any rate been disapproved by the police.

3. The application is further supported by an affidavit of Chris Everand, Chairman of Kenya Security Industry Association.

4. The application is opposed is opposed vide grounds of objection filed by counsel for the claimants. Mr. Manada on 23<sup>rd</sup> January 2011 follows: -

- (i) The intended interested party lacks locus to file the current application.
- (ii) There has been gross and unexplained delay in applying to join in the proceedings.
- (iii) The application is frivolous, vexatious an otherwise an abuse of Court process.

5. Rule 33 of the Employment and Labour Relations Court (procedure) Rule 2016, provides:

**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.**

6. The applicant herein is an intended interested party who purposes to join the suit after judgment without seeking leave of the court. On the basis, that it is aggrieved by the decision of the court.

7. The applicant relies on the decision of the Court of Appeal in **JMK –vs– MWM and another [2015] eKLR** where it was held;

“The rule do not define “*aggrieved person*” but it defines ‘party’ to mean is a person, a trade union, an employer, employer’s organisation or any corporate body directly involved or affected by an appeal, or claim for which the court has taken cognizance or who is a party to a collective agreement referred to court for registration. A person who is directly affected by an appeal, or claim to which the court has taken cognizance or who is a party to a collective agreement, referred to court for registration. A person who is directly affected by an appeal, or claim to which the court has taken cognizance is deemed by the rule to be a party and we do not find any reason why such a person cannot be aggrieved party for purpose of applying for review of a decree or order of the court.

8. On the basis of the finding by the court of Appeal, even though it is appropriate that an intended interested party seeks leave to join suit first before filing substantive motion, the court allows the interested party to join the suit.

#### **Merit of the Application for Review**

9. A plain interpretation of Rule 33 limits application for review to matters set out under sub rule (a) to (d) to include:

**(a) if there is discovery of new and important matter or evidence which was not available after the exercise of due diligence;**

**(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.**

10. The applicant seeks the court to revise its finding on facts and law a preserve of the Appeal Court.

11. If the court acceded to this invitation, it would set a bad precedent where courts sat on appeal on their own decisions. There was to be finality in litigation. A litigant who is aggrieved must follow the law in seeking relief, where they are not satisfied with the judgment of the court.

12. The application lacks merit and is dismissed with costs to borne by the interested party.

**Dated, Signed and Delivered at Nairobi this 29<sup>th</sup> day of September 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**