



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 380 OF 2013**

**KENYA HOTELS AND ALLIED WORKERS UNION ....CLAIMANTS**

**VERSUS**

**PANGONI BEACH RESORT .....RESPONDENT**

**R U L I N G**

**INTRODUCTION**

1. On 11/7/2014, I delivered judgment in this case by which I dismissed the claimant's suit with no order as to costs. More than 2 years later the claimants has brought the Notice of Motion dated 28/9/2016 seeking for leave to apply for review of the said judgment. The grounds upon which the Motion stands are that

- (a) Court declined to order recognition despite having found that the applicant had complied with Section 54 (1) of the Labour Relations Act.
- (b) The changes in office bearers of the applicant affected the conduct of the proceedings before and after the impugned judgment.
- (c) It is fair to grant the leave sought.
- (d) The court has jurisdiction to grant the leave sought.

2. The Motion is not opposed for the reason that the counsel representing the respondent declined service on grounds that the respondent has since closed down shop and therefore could not give instructions to the counsel. The claimant has also confirmed that she had received a letter confirming the said closure of business.

**ANALYSIS AND DETERMINATION**

3. The issue for determination is whether the Motion before me has merits. With due respect, the Motion has no merits and it is not founded in law. It has no merits because even it was allowed it would be an exercise in futility. The reason for the foregoing being that the primary dispute was seeking for recognition of the applicant by the respondent as the union to represent the unionisable employees of the respondent in their industrial relations. As confirmed by the claimant, the respondent has since closed shop and as such any order for recognition made would serve academic purposes because the respondent is not operational and has no unionisable employees anymore.

4. The Motion is not grounded on any legal provision because neither civil procedure rules nor rules of procedure for this court provides for any application for leave to apply for review of the decisions of this court. Whereas the rules of procedure of this court do not limit the period within which to apply for review of a decree or order of this court, the civil procedure rules Order 45 rule (1) requires that application for review be brought without unreasonable delay. Consequently, it is my opinion that instead of seeking for leave to apply for review, the claimant should have straight away applied for review of the impugned judgment under rule 33 of the rules of this court for the court to exercise its discretion.

However, it is too late now in the day to do so. In addition the first ground for the application is best suited for appeal as opposed to review as the court is being asked to reevaluate its decision on the merits.

**DISPOSITION**

5. The Notice of Motion dated 28/9/2016 is dismissed for lack of merits and lack of legal basis.

**Dated, signed and delivered this 29<sup>th</sup> September 2017**

**O. N. Makau**

**Judge**