



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 48 OF 2016**

**ROSELYN SISIANI WEKESA.....CLAIMANT**

**VERSUS**

**KONRAD ADENAUER FOUNDATION.....1<sup>ST</sup> RESPONDENT**

**BARBARA ISCHEBECK.....2<sup>ND</sup> RESPONDENT**

**Mr. Makori for Respondent.**

**M/s Wekesa for Petitioner**

**RULING**

1. By a notice of motion filed on 7<sup>th</sup> August 2017, respondent/applicant seeks the following order:

(i) That judgment delivered on 14<sup>th</sup> July 2017 be reviewed on the following terms:-

(a) That the sum of Kshs.3,088,501.63/= already paid to the petitioner on account of severance pay for 14½ years be taken into account and the sum of Kshs.3,737,380.00/= as ordered by the court be adjusted by that sum.

(b) The balance due to the petitioner after such adjustment be subject to statutory deductions.

(c) An appropriate order as to costs of the suit in respect of the interested party be made.

2. Prayer (b) was conceded to and therefore any payment made to the petitioner be subjected to statutory deductions.

3. With regard to prayer (c) the judgment of the court be only against the respondent as opposed to the interested party. This decision is informed by the fact that the respondent was the employer of the petitioner and not the interested party.

4. This was a deliberate finding of the court based on the facts of the case and the jurisdiction of the court in employment and labour relations matters.

5. Similarly, the court had prior knowledge that the petitioner had received severance pay pursuant to her retrenchment. The court however, found specifically that the petitioner was wrongfully and unfairly

selected for retrenchment as against the interested party.

6. The court went ahead to award compensation equivalent to twelve (12) months' salary to the petitioner for the wrongful and unfair termination of employment.

7 In the matter of **Pancras J. Swai –vs– Kenya Breweries Limited Court of Appeal at Nairobi, Civil Appeal No. 275 of 2010 (2014) eKLR** the court followed the decision of Bennet J. in **Abasi Belinda –vs– Fredrick Tangwamu and Another (1963) E. A. 557** when he held that:

*“a point which may be a good ground of appeal may not be a good ground for an application for review; an erroneous view of evidence or of Law is not a ground for review though it may be a good ground for appeal”*

and went on to hold

*“ It seems clear to us that the appellant in basing his review application on the failure by the court to apply the law correctly faulted the decision on a point of law. That was a good ground of appeal but not a good ground for an application for review. If parties were allowed to seek review of decisions on grounds that the decisions are erroneous in law, either because a judge has failed to apply the law correctly or at all, a dangerous precedent would be set in which court decision that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review when such courts are functus officio and have no appellant jurisdiction”.*

8. It is my considered finding that the application before court is not well founded in the grounds set out under Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016.

9. The applicant seeks to fault the judge on the findings he made on law. The court is *functus officio* on those points raised.

10. Accordingly, the application is dismissed with the exception that, the award of the court is subject to statutory deductions.

**Dated, Signed and Delivered on this 31<sup>st</sup> day of October 2017**

**MATHEWS NDERI NDUMA**

**JUDGE**