

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1903 OF 2015

BENSON WEBUYE MAKANA.....CLAIMANT

VERSUS

TANDU ALARM SYSTEMS LTD.....RESPONDENT

RULING

1. The Respondent in the claim filed a review application on 15th September 2016. In the application the Respondent seeks the review of the decision of this Court made on 26th July 2016 delivered by Nduma Nderi J. on 5th August 2016. The motion was supported by grounds on the face of it and the affidavit of Martin Haylock. The Respondent was aggrieved by the judgment of this court and indicated that it had serious and arguable grounds for a review with an overwhelming chance of success. The final ground was that in the interests of justice, the judgment ought to be reviewed and its execution.

2. The Claimant who was the respondent to the application was opposed and he filed a replying affidavit on 30th September 2016. He deposed that the application was defective and ought to *ipso facto* be struck out with costs. Further, he deposed that the application had not met the requisite standard to warrant a review and that the Respondent had all along been served with processes in the suit. He stated that there was no discovery of any new and important matter of evidence to warrant a review. He deposed that the Respondent was indolent as a lapse of 10 months from time of service to the time the orders were sought was inexcusable and thus underserving of the court's discretion.

3. The review of a judgment is provided for under Rule 33 of the Employment and Labour Relations Court (Procedure) Rules 2016. Under the rule, the applicant must bring themselves within the ambit of the rules. That is to say, they must demonstrate that the cause warrants review:-

(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 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.

4. The Respondent asserts that the judgment of this court given in 2016 warrants review but woefully fails to demonstrate what new and important matter or evidence which, after the exercise of due diligence that was not within the knowledge of the Respondent or could not be produced by the Respondent at the time when the judgment was given, is now available. The Respondent does not demonstrate that there is a mistake or error apparent on the face of the record and neither does the Respondent demonstrate that the judgment requires clarification. In my considered view, there isn't any sufficient reason to warrant a review of my decision. The application thus hopelessly fails and is dismissed with costs the Claimant.

It is so ordered.

Dated and delivered at Nairobi this 27th day of November 2017

Nzioki wa Makau

JUDGE