



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT

NAIROBI

CAUSE NO.74 OF 2013

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS....CLAIMANT

VERSUS

MERU NORTH FARMERS CO-OPERATIVE LTD.....RESPONDENT

RULING

1. The claimant, Kenya union of Commercial Food and Allied Workers by application dated 16th October, 2014 is seeking for a review of the court judgement delivered on 18th February, 2014.
2. The ground upon which the application is made is premised on paragraphs 274 to 284 of the judgement.
3. The parties have a Recognition Agreement and Collective Bargaining Agreement making provision for 3 months' notice. The grievant served the respondent for 22 years before his employment was terminated. During litigation the grievant pleaded with the court for sympathy with his children still in school. The claimant expected the court to award the grievant in terms of clause 4(e) of the CBA. Whether reinstatement fails or not, a grievant is awarded benefits as provided for in the CBA particularly where the court found the termination of employment was not procedural.
4. The claimant has computed the terminal dues owing to the grievant but the respondent has declined to pay. Such dues and compensation is allowed under section 49 of the Employment Act, 2007.
5. In reply the respondent filed Replying Affidavit sworn by Titus Munjuri the Chief Executive Officer, Dhabiti Sacco Limited and who avers that the respondent entity, Meru North Farmers Sacco Limited has since ceased to exist and by a Certificate of Change of Name is now called Dhabiti Sacco Limited.
6. Upon judgement herein the claimant wrote and demanded the payment of kshs.2, 052, and 2506.70 and in reply, the respondent offered Kshs.29, 126.10 in accordance with the court order but the claimant declined. The respondent wrote to the claimant to collect the cheque but failed to oblige.
7. Application for review has not met the requisite threshold. There is no new matter or evidence that was not available at the hearing. The judgement of the court addressed all matters to a close and application should be dismissed with costs.
8. The court Rules applicable as of 16th October, 2014 when the application by the claimant was filed were the Industrial Court (Procedure) Rules, 2012 and which provided at Rule 33 as follows;;

33. Review.

(1) A person who is aggrieved by a decree or an order of the Court may apply for a review of the award, judgment or ruling—

(a) if there is a 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; or

(b) on account of some mistake or error apparent on the face of the record; or

(c) on account of the award, judgment or ruling being in breach of any written law; or

(d) if the award, the judgment or ruling requires clarification; or

(e) for any other sufficient reasons.

9. A review of a judgement must therefore be based on the grounds that there is discovery of a new matter or evidence, mistake or error on the face of the record, in breach of the law or for any other sufficient cause. These are the matters required for a review.

10. The claimant application is premised on lines 272 – 284 of the judgement. My reading of the judgement is that it is made of paragraphs from 1 to 22. This notwithstanding, at paragraph 21, the court made a finding that the evidence on record is of the nature that the grievant was unfairly terminated but he contributed to his termination of employment. On the claim for his reinstatement, this was declined, the court having put all into account.

11. The findings of the court at paragraphs 21 and 22 were thus premised on the court addressing the Memorandum of Claim filed on 23rd January, 2013 in its entirety. With the termination of the grievants employment with the respondent thus addressed and reinstatement declined as reasoned in the judgement, the employment relationship between the respondent and the grievant as represented by the claimant ceased.

12. With such clarity, I must point out that there is a fundamental difference between an application for review and the threshold to be met by an applicant as against a party filing an appeal to the Court of Appeal where there is an error of the law or application of the law. An applicant seeking a review of the orders of the court must therefore introspect the impugned order carefully to determine which mode to apply and thus address appropriately.

In this case I find no new matter or evidence, error of the record or breach of the law or any sufficient cause to warrant a review of the court judgement of 18th February, 2014. Accordingly, application dated 16th October, 2014 is hereby dismissed. Each party to bear own costs.

Delivered in open court at Nairobi this 7th day of November, 2017.

M. MBARU JUDGE

In the presence of:

David Muturi & Nancy Bor – Court Assistants

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