



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 29 OF 2007

KENYA ELECTRICAL TRADE AND

ALLIED WORKERS UNION.....CLAIMANT

VERSUS

KENYA POWER AND LIGHTING COMPANY LTD.....RESPONDENT

RULING

1. By a Notice of Motion dated 6th February, 2014 the claimant sought the review and varying of an award made on 27th November 2009 in terms of order number 6 that the minimum basic salary for the lowest union, that is “UG 12” be at Kshs.13,000/= per month with effect from 1st January 2009. The applicant further sought that an order do issue directed to the respondent to comply with order no. 2 and 3 of the award dated 27th November, 2009.

2. In support of the application, Mr. Onyony for the applicant’s submitted that the award delivered by the Court on 27th November, 2009 was accorded different meanings by the parties which led to an application dated 12th February, 2012 seeking the Court’s interpretation of the award. He further submitted that the award aggrieves members of the applicant union and should be varied in terms of award order number 6 in accordance with rule 32(1) (d) (e) of the rules of this Court. According to Mr. Onyony, the respondent wrongly applied and or misinterpreted order 6 of the award leading to absurdity and irreparable damage to the claimant’s members.

3. On the issue of res judicata, Mr. Onyony submitted that the application for review and variation cannot be res judicata since there has been no judgment or decree on merit regarding the grounds on which the application for review has been brought and that the same issues have never been reviewed. To support these submissions counsel relied on several authorities such as **Geoffrey Mundia Kabethi v. Peter Wanjohi Njogu & Anor (2013) eKLR. Republic v. Public Procurement Administrative Review Board ex parte Olive Telecommunication (2014) eKLR.** According to counsel, the prayers before the Court were for the Court to consider and vacate or vary the award of 27th November, 2009 and that the previous application was for interpretation of the award. These according to counsel are two issues which are substantially different with different expected outcomes.

4. Ms. Kamau for the respondent submitted that the applicant was estopped from filing a second review application by rule 32(7) of the rules of the Court.

5. According to Counsel, the present application was res judicata in that on 29th November, 2009, the Court delivered its judgment and thereafter the applicant filed an application for interpretation conveniently titled “INTERPRETATION OF AWARD” dated 10th February, 2010. The Court made a ruling on this application on 10th February, 2010. To support this submissions counsel relied on the case of **Akamba Public Road Service Vehicles & Another v Joseph Salima (2015) eKLR** and several other authorities.

6. Ms. Kamau further submitted that the application dated 10th February, 2010 was essentially and substantively an application for review and this was observed by the Court in its ruling on page 6 and 7 thereof.

7. According to counsel, therefore this Court became functus officio having pronounced judgment and made a ruling on the application for review of the award. She further submitted that the claimant’s application dated 10th February, 2010 did not stop short of requiring clarification or interpretation of the award instead the claimant went into detail giving their own version of what the honourable Court should have awarded and by doing so the claimant had effectively moved from the parametres of interpretation and firmly placed itself within the premises of a review, a fact that was noted by the Honourable Court.

8. The Court has considered the present application side by side with submissions and ruling made in respect of the application dated 10th February, 2010 and is in agreement with the respondent that the present application though couched as a review application raises the selfsame issues that were subject of the earlier application. Rule 32(7) provides that an order made on review shall not be subject to further review. The application is therefore found without merit and is hereby dismissed with costs.

9. It is so ordered.

Dated at Nairobi this 11th day of March 2016

Abuodha J. N.

Judge

Delivered this 18th day of March 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge