



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**OF KENYA AT NAIROBI**  
**CAUSE NO. 1929 OF 2013**

**ERIC ARINGO.....CLAIMANT/APPLICANT**

**VERSUS**

**PARBAT SIYANI CONSTRUCTION LTD.....RESPONDENT**

**RULING**

1. The application before the Court is the Claimant/Applicant's review application dated 20<sup>th</sup> January 2016 and filed on 1<sup>st</sup> February 2016. Through it, the Claimant seeks to have the judgment of the court issued on 10<sup>th</sup> December 2015 reviewed. The gravamen of Claimant's memorandum of review was that there was a mistake or error apparent on the face of the record, the judgment requires clarification and that there are sufficient reasons to review the award. The Claimant sought that the judgment be varied to reflect when the Claimant was employed and the correct salary over the years more so, by October 2013, award the outstanding leave days and service pay.

2. The Respondent filed grounds of opposition on 30<sup>th</sup> March 2016 and in the grounds stated that the review application does not meet the threshold for review as contemplated under Rule 32 of the rules of this Court, that the Claimant has not disclosed any new material facts that would necessitate review and that there was no mistake or error on the record as envisaged under Rule 32(1)(b). The Respondent asserted that the application was challenging the reasoning of the Court and that is where an appeal would lie and not review as provided for under Section 17 of the Employment & Labour Relations Court Act and the application therefore sought to have the Court sit on appeal over its own judgment.

3. The application is one which seeks review of the judgment of this Court.

4. In matters review, the Industrial Court (Procedure) Rules 2010 provide as follows under Rule 32.

*32. (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.

(2) An application for review of a decree or order of the Court under subparagraphs (b),(c), (d), or (e), shall be made to the judge who passed the decree, or made the order sought to be reviewed.

(3) A party seeking review of a Court decree or order of the Court shall apply to the Court in Form 6 set out in the First Schedule.

(4) An application under paragraph (3) shall be accompanied by a memorandum supporting the application and the Court shall proceed to hear the parties in accordance with section 26 of the Act.

(5) The Court shall, upon hearing an application for review, deliver a ruling allowing the application or dismissing the application.

(6) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(7) An order made for a review of a decree or order shall not be subject to further review.

5. In the case before me, the Claimant seeks to have determination of various aspects he asserts the Court did not delve into. He seeks the Court make a determination on the date of his employment and a plethora of reliefs he asserts the Court did not consider such as his leave dues. Plainly put, the Claimant seeks a re-hearing of the case and therefore is out of the remit of the provisions of Rule 32. A review cannot be granted because another judge looking at the case would have come to a different conclusion. The Court of Appeal held in the case of **National Bank of Kenya v Ndungu Njau [1997] eKLR** as follows:-

*A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review. (emphasis mine)*

6. The review sought by the Claimant is one that squarely places the issue within the bounds of **National Bank v Ndungu Njau**. The issues canvassed in this motion are for the Court of Appeal and not this Court. My finding is that the review application is unmerited and I accordingly dismiss it with costs to the Respondent.

Orders accordingly.

**Dated and delivered at Nairobi this 26<sup>th</sup> day of July 2016**

**Nzioki wa Makau**

**JUDGE**