

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NUMBER 10 OF 2012

BETWEEN

JOSEPH ASHIOYA & 165 OTHERSCLAIMANTS

VERSUS

1. KENYA UNITED STEEL CO. LIMITED.....RESPONDENT

2. PRICEWATERHOUSE COOPERS LIMITED INTENDED 2ND RESPONDENT

RULING

1. Hon. Judge Radido Stephen, delivered a Ruling dated 26th July 2013, dismissing the Claim against the 2nd Respondent, on the ground that the 2nd Respondent was a Receiver/Manager of the 1st Respondent, and could not be sued in its own name. The Claim against the 2nd Respondent was found to be incompetent, but the Claimants were allowed to proceed against the 1st Respondent.

2. The Claimants filed an Application dated 3rd July 2014, seeking to have the orders of 23rd July 2013 reviewed, and the Claim against the 2nd Respondent reinstated. The 2nd Respondent is opposed to the Application to have it rejoin the proceedings. Parties filed their respective Affidavits supporting their positions, and agreed to have the Application considered and determined on the strength of these Affidavits and Submissions.

3. In their Submissions, the Claimants list and argue 7 Grounds in support of the Application. These are mainly on matters of law, revolving around the finding by the predecessor Judge, that Receiver/Managers cannot be sued in their own names. They submit, in a manner characteristic of appellate language, that the predecessor Judge erred. They go on to give legal arguments on why the Judge erred.

4. In the respectful view of this Court, the Application has not been shown to fall within Rule 32 of the Industrial Court [Procedure] Rules 2010, which regulates the review jurisdiction of the Court. There is no discovery of fresh matter of evidence; there is no mistake apparent on the face of the record; the Ruling does not breach any written law; it does not require clarification; and there is no other sufficient reason to justify review.

5. The thrust of the Application is that the predecessor Judge misapprehended the law on Receiver / Managers. Such misapprehension, if indeed there was misapprehension, should be corrected by the Court of Appeal. Misapprehension of the law is not a sufficient reason to justify review. Contentious legal concepts are best taken through the process of distillation, within the hierarchy of Courts, rather than being circulated before different Judges in the same Court. Distillation allows the law to develop. This Court thinks the submission by the intended 2nd Respondent, that review would amount to the Court sitting on appeal, is persuasive. The Grounds listed by the Claimants in seeking review, should properly be Grounds of Appeal.

6. The Application for review of the orders made on 26th July 2013 is rejected. The Claimants have the option to pursue an Appeal against those orders, or prosecute the Claim against the remaining Respondent.

IT IS ORDERED:-

a) The Application dated 3rd July 2014 seeking review of the orders made on the 26th July 2013 is rejected.

b) Costs in the Cause

Dated and delivered at Mombasa this 29th day of September 2016

James Rika

Judge