



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO.144 OF 2015**

**ROBERT KINYANJUI KANAMPIU..... CLAIMANT**

**VERSUS**

**KIONYO TEA FACTORY COMPANY LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 7<sup>th</sup> October, 2016)

**RULING**

The court delivered the judgment in the suit on 09.06.2016. The court entered judgment for the claimant against the respondent for:

- 1) The declaration that the termination of the claimant's contract of employment by the respondent was unfair.
- 2) The respondent to pay the claimant **Kshs. 172, 108.00** by 01.08.2016 failing interest to be payable thereon from the date of the suit till full and final payment.

The respondent has already complied with the judgment and paid the claimant the entire judgment sum.

The claimant has filed on 26.09.2016 the notice of motion under order 45 of the Civil Procedure Rules. The claimant prays for review of the judgment to be awarded severance pay under clause 17(b) of the CBA and to be paid for the period he was out of employment up to the date of the judgment which found the termination was unfair and such payment being under clause 12(f) of the CBA. The application was based on the claimant's supporting affidavit filed together with the application.

The respondent opposed the application by filing the replying affidavit of Grace Boher, the respondent's accountant. The respondent's case is that the claimant is introducing new matters which were not pleaded and which with due diligence should have been canvassed at the full hearing of the suit. The respondent has submitted that at all material times the CBA was available and nothing stopped the claimant from urging the matters in the application for review at the full hearing. Thus, it is submitted that the application fails to meet any of the established thresholds for grant of an application for review.

It was further submitted for the respondent that clause 12(f) of the CBA cannot apply because the court found that the claimant contributed to his own termination. Further, clause 17 (b) of the CBA would not apply because it provides for payment of severance pay in cases of redundancy.

The court finds that as submitted for the respondent, the claimant's case fails to meet the threshold for grant of review because with due diligence, all the matters in the application would have been raised at the hearing of the suit. In any event, as submitted for the respondent, the cited clauses of the CBA would not aid the claimant's case for review.

In conclusion the claimant's application dated 26.09.2016 and filed on 26.09.2016 is hereby dismissed with orders that the claimant will pay the respondent's costs of the application fixed at **Kshs. 2, 000.00**.

**Signed, dated and delivered** in court at Nyeri this **Friday, 7<sup>th</sup> October, 2016**.

**BYRAM ONGAYA**

**JUDGE**