



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABORU RELATIONS COUR TOF KENYA AT NAIROBI

CAUSE NO.2535 OF 2012

JAMES KIPCHIRCHIR SAMBU CLAIMANT

VERSUS

PATRIOTIC GUARDS LTD RESPONDENT

RULING

1. By application and Notice of Motion dated 21st October 2016, the respondent, Periotic Guards Limited is seeking for the review and or varying of court orders and ruling of 31st October, 2016. The application is supported by the affidavit of Titus Kigen and on the grounds that the court allowed the application dated 20th January, 2016 on condition that there be a deposit of the entire decretal amount in a joint interest earning account of both advocates for the parties herein. The respondent is able and willing to offer alternative forms of securities including valued Title Securities to cover the decretal sum forthwith and pending hearing of the appeal.

2. That there is a high chance of execution if a review is not allowed and pending hearing of appeal.

3. In reply, the claimant filed Grounds of Opposition on the basis that the application by the respondent is vexatious as no grounds for review have been made or any effort to justify a review has been set out. That the orders being sought for review has not been extracted and annexed.

4. Both parties filed their written submissions.

5. The respondent submit that there will be massive loss and damage if an alternative form of security for the due performance of the decree is not made as provided for under Order 42(6)(2)(a) & (b) of the Civil Procedure Rules. The respondent is a company of means and is able and willing to offer logbooks and landed securities valued at its own costs by government recognised agents and the same be produced and deposited with the court. This was ordered in the case of **Salama Mahmoud Saad versus Kikas Investment Limited & Another [2014] eKLR**.

6. The claimant submit that an application for review of orders of this court arise under Rule 33 of the Court Rules. There must be an error apparent on the face of the record. The court has rendered itself on this matter and a ruling on record. To invite the court to make a fresh finding is not in the interests of justice as held in **Welco Services International t/a Cajetan Phidelis Ombere versus Dr Rajpal Singh Jabal**.

Determination

7. The court has already addressed the issue of stay of execution in the ruling of 20th January 2016 and set

out what the respondent ought to do to secure their right to appeal against the orders of this court. To file application for review and fail to take into account the provisions of Rule 33 of the Employment and Labour Relations Court (Procedure) Rules is to simply use the court process to stall the orders and directions already issued by the court. for the court to go back on its orders of 20th January, 2016 without any due course, to revise the orders made without any good grounds is simply to be invited to seat on appeal of the same and this is already overtaken by events. The matters set out by the respondent with regard to a changed mode of securities should have been addressed in the application leading to the orders of 20th January, 2016.

8. The essence of the decision cited by the respondent in the case of **Nancy Wanjeri & 5 others versus Michael Mungai [2014] eKLR** is that a review is granted where there is an error apparent on the face of the record. An error or omission must be by itself be evident and should not require an elaborate argument. As such, the application by the respondent is not based on any error of the record or any order of the court cited as requiring any correction of any error apparent.

9. In any event the respondent has submitted that this is a company of means and capable to making good the orders of the court. Where indeed a security deposit is desirable, it would only fit to demonstrate that a money deposit should suffice as the most efficient and sufficient security.

10. The court has rendered itself in the ruling and orders of 13th October, 2016. To be invited to review the same without citing the error or mistake on the orders made is not what the provisions of Rule 33 of the court Rules contemplate.

11. I therefore find no good grounds that merit a review or variation of the orders of the court.

The application dated 21st October, 2016 lack merit, this is an abuse of court process and is hereby dismissed with costs.

Orders accordingly.

Ruling delivered in open Court at Nairobi at Nairobi this 19th day of December, 2016.

M. MBARU JUDGE

In the presence of:

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