



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 354 OF 2009

JOHN KIPKURUI CHERUIYOT CLAIMANT

VERSUS

EQUITY BANK RESPONDENT

Mr. Besek for the Claimant/Applicant

M/s Ndirangu for the Respondent

RULING

1. The Claimant/Applicant brought an application dated 5th August, 2014 under Order 45 Rule I of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking to review the Judgment of Hon. Stephen Radido J. delivered on 2nd November, 2012.
2. The grounds for the intended review are set out on the face of the Notice of Motion as follows;
 - a. The Honourable Court did not take into account the averments made in the Pleadings and Submissions when discerning over the issue of annual leave by declining to grant payment for unpaid annual leave in the year 2009
 - b. The Honourable Court did not consider the Claimant's submissions for unpaid arrears in failing to award the unpaid arrears.
 - c. The Honourable Court did not consider the Claimant's averments contained in the Pleadings and Submissions by failing to award compensation for wrongful dismissal despite all the evidence being placed before the court; and
 - d. The Honourable Court failed to award the Claimant costs of the suit herein despite the fact that the Respondent did not dispute service of demand notice to the Respondent.
3. The Application is further supported by Affidavit of the Claimant/Applicant sworn on 5th August, 2014 which reinforces the aforesaid grounds.
4. The Respondent filed a response to the Application supported by an Affidavit of Florence W. Njuguna, Legal Officer on 23rd September, 2014.
5. The nub of the opposition is as follows;
 - a. The Application ought to have been brought in terms of Rule 32 of the Industrial Court

(Procedure) Rules, 2010, and not in terms of the Civil Procedure Rules. The Application is therefore bad in law, is incompetent, misconceived and amounts to abuse of the court process.

- b. That the Award was delivered on 2nd November, 2012, in the presence of the Claimant's Advocate and that the Application has been brought more than 1½ years after the delivery of the Award.
- c. The Application does not disclose any of the grounds for review provided under Rule 32 of Industrial Court (Procedure) Rules, 2010.

6. Both parties have filed written submissions in support of their arguments.

7. **Determination**

The Application was brought more than 1½ years after the Judgment of court. No explanation is forthcoming from the Claimant in his papers for the delay.

8. It is the court's considered opinion that litigation must come to an end, and it is improper for a Claimant in whose favour the Judgment was made to enjoy the fruits of the Judgment and after more than 1½ years seek to revive the matter afresh.

9. Although the court rules do not provide a time bar in which an application for review may be brought, the court considers the delay inordinate and therefore an abuse of the court process.

10. Each case must however, be treated on its own merits. In this case no explanation for the delay has been stated. For this reason alone, the Application ought to fail but the court will consider the merits of the Application.

11. Furthermore, the Application ought to have been brought in terms of Rule 32 of the Industrial court Rules and not the Civil Procedure Rules.

12. It is wrong for the Applicant to ignore the rules of the court which are more simplified to suit the circumstances of the court. This *per se* is not a disqualifier but is a factor to take into account in determining the merits or otherwise of the Application.

13. On the specific grounds set out by the Applicant for review, the same seem to fall under Rule 32(1) (b), "On account of some mistake or error apparent on the face of the record" and (c) "On account of the award, judgment or ruling being in breach of any written law".

14. The Applicant accuses the trial Judge of failing to consider the Pleadings and Submissions on the issue of annual leave, unpaid arrears, compensation award and costs.

15. A perusal of the Judgment of the court indicates that the complaints by the Applicant have no merit. The trial Judge specifically dealt with all the issues complained of and made a well-reasoned decision.

16. However, no explanation was given for failure to award costs to the Claimant. This failure had the potential of nullifying the minimal award granted to the Claimant in the sum of Ksh.60,000.00.

17. This to me, was in breach of the law in that costs must follow the outcome. The claimant was partly successful and was entitled to an order for costs.

18. The court reviews the Judgment of the court only to that extent.

Dated and Delivered at Nairobi this 25th day of February, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE