



**REPUBLIC OF KENYA**

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

**CAUSE NUMBER 1507 OF 2013**

**SAMUEL OKELLO GAWO..... CLAIMANT**

**VERSUS**

**ALIBE SECURITY SERVICES LIMITED.....RESPONDENT**

**RULING**

1. By a motion filed on 24<sup>th</sup> November, 2014 the claimant prays that the Court reviews and sets aside the order of Hon. Justice Marete which dismissed the claimant's claim and that the same be set down for hearing afresh.
2. The application was brought on the grounds that the applicant was not represented in the course of the entire proceedings and since he was not conversant with procedural technicalities, he did not prosecute his claim to the expected standards. The applicant further stated that when the applicant presented himself in Court he was not ready to proceed as he did not have the requisite documents to support his claim. The applicant states that he has since managed to appoint an advocate to represent him and has sufficient evidence to establish an employer- employee relationship.
3. The respondent opposed the application stating that the same was brought over four months after the judgment hence inordinately late. Counsel for the respondent further submitted that the suit was heard on merit and the claimant given an opportunity to prosecute his case besides the claimant is the one who took the date of hearing and proceeded without producing any documents or calling any witness.
4. This court is clothed with power to review its decisions however such review can only be done where the applicant satisfies the Court that there is discovery of new facts or materials which after exercise of due diligence the applicant could not lay his or her hands on at the time of the trial. The Court will also review its judgment or order when the same is made per incuriam. That is to say without taking into account the provisions of existing law regarding the matter.
5. The applicant in this case alleges that he did not know the case was due to proceed for hearing on the material day hence did not carry with him documents in support of his case. He further alleges that he is a layman not familiar with Court process hence did not prosecute his case well. He had since hired an advocate hence wanted the case to start de novo.
6. As much as these are not grounds for review contemplated by the rules of the Court, it is also curious that the applicant is the one who set the suit down for hearing. If he was not prepared to proceed, nothing prevented him from seeking adjournment to prepare. There is nothing on record to show that the applicant applied for adjournment and was refused.

7. The minutes on the Court file on the material date show that the claimant informed the Court that he served the respondent who refused to acknowledge service and he was ready to proceed with his case.
8. The claim that the claimant has now appointed an advocate to prosecute the claim on his behalf is not a sufficient ground for review. If indeed the claimant appreciated the need for legal representation nothing prevented him from hiring one earlier.
9. The learned Judge heard the claimant and rendered his judgment. The Judge formed the view that the claimant did not sufficiently prove his case and dismissed the same. If the claimant was dissatisfied the proper thing to have done was to file an appeal.
10. In conclusion, the Court is of the view that this is not a proper case to exercise the power to review and hereby dismisses the application with costs.
11. It is so ordered.

Dated at Nairobi this 22<sup>nd</sup> day of May 2015

Abuodha J. N.

Judge

Delivered this 22<sup>nd</sup> day of May 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge