



REPUBLIC OF KENYA

IN THE EMPLOYMENT NAD LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1518 OF 2013

EDWARD ACHOLLA CLAIMANT

VERSUS

SOGEA SATOM KENYA BRANCH1ST RESPONDENT

SOGEA SATOM (FRANCE)2ND RESPONDENT

VINCI CONSTRUCTION (FRANCE)3RD RESPONDENT

RULING

1. The Respondents herein Sogea Satom Kenya Branch, Sogea Satom (France) and Vinci Construction (France) filed their application dated 11th December 2014 seeking a review of the Ruling of the Court dated on 1st December 2014 which application is bought under the provisions of Rule 32 of the Industrial Court (Procedure) Rules. The application is supported by memorandum thereto as under the Rules. The Claimant, Edward Ochola filed his Replying Affidavit on 10th March 2015 in reply.

2. The application by the Respondents is based on the grounds that the Court Ruling on 1st December 2014 requires review noting the Ruling was with regard to an application dated 30th September 2014 which was allowed. In the application, the Claimant had sought for orders;

- (a) That the matter be allowed to proceed for full hearing*
- (b) The orders given on 18/2/14 be upheld and the applicants be asked to deposit Kshs.5,000,000.00;*
- (c) The hearing dates be given on a priority basis as earlier ordered by the court; and*
- (d) The respondent deposit the sum equivalent to the amounts received in a joint account or provides security deposit of corresponding amount approved by the court.*

3. In effect the Court allowed all the orders sought by the Claimant herein but the Court left out some questions not answered and thus the request for review and clarification in that the Respondents had deposited Kshs.10,538,014.00 in settlement amount noting the consent order has been set aside; and thus the respondent should be directed to refund the entire amount immediately and where there is no refund a time period be given for the refund and or that the Claimant should remit the entire financial charges of the transfer as borne by the respondents. Other grounds are that the respondent is seeking a review and clarification with regard to the requirement to deposit Kshs.5, 000,000.00 ordered on 18th February 2014 and where this order is confirmed, where the monies should be deposited as the Claimant is acting in

person and in this case, the Kshs.5, 000,000.00 be deemed to be within the monies already deposited with the Claimant and then refund the rest to the respondents. In this case the Respondents are entitled for interest for unwarranted detention of the settlement sum by the Claimant and this should be refunded with interest.

4. The Claimant in reply stated that the application by the Respondents lack merit and it does not meet the threshold set under Rule 32 of the Industrial Court (Procedure) Rules as there is no discovery of new evidence or an error apparent on the face of record. The Court found merit in the application dated 30th September 2014 and ordered for the deposit of Kshs.5,000,000.00 as directed on 18th February 2014 and that there be a deposit of sum equivalent to the amounts received in a joint account or provide security deposit of the corresponding amount approved by the court. The deposit of Kshs.5, 000,000.00 has not been complied with as security and this is a breach of the orders herein and in contempt of court.

5. The Claimant further states that noting the Court Ruling on 1st December 2014, there is a hearing date set for 13th May 2015 and the current application is meant to scuttle the hearing and avoid the orders requiring a deposit of security. The Court has already addressed the question of a deposit and the current application raises nothing new and should be dismissed with costs.

6. A Court can review a Ruling or judgement where a new and important matter of evidence is produced that was not possible to be produced at the time the decree was passed or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. Therefore the criteria for the Court to apply in an application for review are;

- a) Discovery of new and important matter or evidence;
- b) There is an error or Mistake apparent on the face of the record; or
- c) For any other sufficient reason.

7. The Court reading of these principles that apply in an application for review only apply where the aggrieved party has not preferred an appeal as a good ground for appeal in not necessarily a good ground for review. In an application for review, the error or omission must be self-evident and it is not sufficient to say neither that the Court would have taken another view nor that the judge proceeded on an incorrect exposition of the law and therefore reached an erroneous conclusion of the law. Therefore a misconstruction of the law or other provisions of the law is not a good reason for a review. See **Kiliopa Omukuba Okutoyi versus Telkom Kenya Ltd, Cause No.341 of 2010.**

8. The principles applicable with regard to review or clarification of Court orders are to be found under section 12 of the Industrial Court Act and Rule 32 of the Industrial Court (Procedure) Rules thus;

32. Review.

(1) A person who is aggrieved by a decree or an order of the Court may apply for a review of the award, judgment or ruling—

(a) if there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or

(b) on account of some mistake or error apparent on the face of the record; or

(c) on account of the award, judgment or Ruling being in breach of any written law; or

(d) if the award, the judgment or Ruling requires clarification; or

(e) for any other sufficient reasons.

(2) An application for review of a decree or order of the Court under subparagraphs (b),

(c), (d), or (e), shall be made to the judge who passed the decree, or made the order sought to be reviewed.

9. From the onset, there is no consent order herein. The basis of the Court Ruling on 1st December 2014 was that the Respondents had proposed to have a judgement by consent, which proposal consent was not recorded as the order of the Court and thus the matter remains as filed, not settled through consent of the parties.

10. The orders thus sought with regard to the refund, release and or refund with interest and costs of the deposit sum are outside any orders the Court has made. This is in essence to invite the Court to go back on its findings and reassess the same. I find these are matters outside the issues at hand; the deposits made with regard to the proposed consent were made outside the Court and cannot be sanctioned within the prayers sought herein. Paragraph 11 of the Court Ruling dated 1st December 2014 is informative.

11. I also find there is a valid order not challenged directing the Respondents to deposit Kshs.5, 000,000.00 herein and the modalities of holding such monies already addressed by the court. The review application does not challenge this orders with regard to the Kshs.5, 000,000.00. Where there is no compliance with the orders made on 18th February 2014, the aggrieved party should apply as appropriate. I will leave it at that.

12. That said, it is not lost to the Court that the Claimant may have received monies from the respondent in an effort to settle the matter in the proposed consent that was subject of the Respondents application dated 30th September 2014 where the Court has already ruled. There is need for the Claimant to address this issue, even as he seeks for the compliance of the orders made on 18th February 2014 as to move in disregard thereof and fail to account for monies received in a series of events leading to this suit will only be counter-productive. As the Court sets the matter for hearing of the main cause, the Claimant should proceed with haste and come to terms with the reality that he has no judgement herein yet and to move as if he has an entitlement to monies received at the negotiation level, he is only attracting suits against himself and additional costs.

I therefore find Respondents application lack merit in this context as there is nothing new, error or breach of the law or any sufficient reason to warrant a review of the orders made on 1st December 2014. Application for review and dated 11th December 2014 is hereby dismissed. Costs to the claimant.

DATED and DELIVERED at NAIROBI this 20th day of May, 2015.

M. Mbaru

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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