



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 1081 OF 2010

STANSLAUS G. MOTTE CLAIMANT

VERSUS

BAMBURI CEMENT LTD RESPONDENT

Mr. Oyatsi for the Respondent / Applicant

M/S Guserwa for Claimant / Respondent

RULING

1. In the judgment delivered on 4th April 2014, upon analyzing the documentary and oral evidence tendered by the Claimant the Court stated as follows;

“The Respondent did not present any oral evidence to refute the evidence by the Claimant. The bundle of documents filed by the Respondent on 12th November 2012, did not benefit the Respondent’s case as no witness introduced them to Court giving relevant information regarding each one of them.”

2. The Respondent brought this Application for review citing Rule 21 of the Industrial Court (procedure) Rules 2010 which states as follows:

“Determination by documentary evidence.

The Court may, subject to an agreement by all parties, proceed to determine a suit before it on the basis of pleadings, affidavits, documentary evidence and submissions made by the parties.”

3. It is not correct from the record of the Court proceedings that the parties entered a consent on 30th July 2013, to the effect that the Respondent would dispense oral testimony and rely on the list of documents filed on 12th November 2012 and witness statement dated 5th October 2010.

4. It is clear from the record that the Respondent having failed to secure its witnesses opted to close the Respondent’s case on 30th July 2013.

5. The Court then gave directions on the filing of written submissions by both parties, which submissions were duly filed.

It is the Court's considered view that the Application does not disclose any permissible grounds for review of the Court's judgment in terms of **Rule 32(1) a – c** of the Industrial Court (procedure) Rules, 2010.

6. Instead, possible grounds of appeal are disclosed in paragraphs 9, 10 and 11 of the Memorandum of review to the extent that the Applicant alleges that the Court made errors of law.

7. In as much as the Applicant may have an arguable Appeal and has duly filed a notice of Appeal dated 14th April 2014, these grounds do not avail the Applicant as there is no apparent breach of any written law on the face of the judgment of the Court to warrant a correction of the error by the trial Court.

8. It is also wrong for the Applicant having noted an Appeal on 14th April 2014, to thereafter file an Application for review on 8th September 2014, while the Appeal is still pending determination.

For these reasons, the Application for review is dismissed with costs to the Claimant / Respondent.

Dated and Delivered at Nairobi this 8th day of May 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE