



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 11 OF 2006

KUDHEIHA WORKERS.....CLAIMANT

VERSUS

**CATERING & TOURISM DEVELOPMENT LEVY TRUSTEES.....
RESPONDENT**

RULING

1. The applicant in this matter seeks review of the award of the predecessor to this Court made on 30th May, 2008.
2. The application is brought on the grounds that the grievant was underpaid by Kshs.1995 and Kshs.2190 as salary and house allowance for the months of January, February and March, 1997 and further that the applicant could not apply for the review of the award because the grievant was handling his cause with RBA which took time to be determined after the Court directed the grievant to do so in its award.
3. Under the rules of this Court a review can be done where there is discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of that person or could not be produced by the person at the time when the decree was passed or order made. The Court can further review its order on account of mistake or error on the face of the record or on account of the award being in breach of any written law.
4. I have reviewed the present application and it would seem to me to be premised on the first ground to wit, discovery of a new and important matter or evidence. The applicant avers that he was underpaid contrary to terms and conditions of service of the respondent, 1991 version.
5. It would therefore mean that at the time of filing this claim these terms and conditions existed and the grievant if he exercised due diligence, could have reviewed them and detected the underpayment. In his memorandum of claim the grievant makes no claim for underpayment which raised the reasonable presumption that there was no such thing.
6. Rule 32 does not simply say that upon discovery of an important matter or evidence the Court will do a review. The applicant must demonstrate that the discovery could not be made at the time of filing the suit even if the applicant exercised diligence. Terms and Conditions of Service is a very obvious document that one cannot say could not be obtained after exercise of due diligence. Further, the applicant is the grievant's Union hence it is incredible that their member could suffer underpayment of wages without their notice.

7. Regarding the second ground for review, I have reviewed the award of the previous Court and could not find where that Court made its award conditional upon the decision of RBA. What that Court said was that it could not make any ruling on the grievant's pension dues since any dispute on the same were governed by the RBA Act.

8. Further, this award was made in 2008, it is in ordinally late to seek a review almost seven years later. The respondent's Counsel is therefore justified in raising objection on this ground.

9. In the upshot, the application for review is found to be without merit and is hereby dismissed with costs.\

10.It is so ordered.

Dated at Nairobi this 31st day of July 2015

Abuodha J. N.

Judge

Delivered this 31st day of July 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge