



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1022 OF 2012

VINCENT EDWARD NJOROGE

PHILIP OPANGA OTENYO

RONALD KAMPA LUGABA

(Suing on their own behalf as well as on behalf of other employees of

KENOL KOBIL LTD).....CLAIMANTS

VS

KENOL KOBIL LTD.....RESPONDENT

RULING

Introduction

1. On 20th January 2015, I dismissed the Respondent's application for orders to strike out the Claimants' claim. The Respondent then filed an application on 24th February 2015 seeking a review of my aforesaid ruling.

Grounds for Review

2. The application for review is based on the following grounds:
- a. The judgment and decree denied the Respondent justice;
 - b. The order or award confers jurisdiction on the Court which it does not have under the law;
 - c. By failing to follow and apply the law as enacted in Section 12(1) of the Industrial Court Act and the interpretation thereof as enacted under the Interpretation and General Provisions Act, Cap 2 Laws of Kenya, the said ruling or order was not properly decided in accordance with the law;
 - d. The errors in the ruling and order are apparent on the face of the record.

The Claimants' Grounds of Opposition

3. In their grounds of opposition filed on 6th May 2015, the Claimants state that:

- a) The Respondent's application is frivolous, vexatious and amounts to an abuse of the court process;
- b) The Applicant has failed to demonstrate how the judgment or decree denied it justice;
- c) Contrary to the Applicant's representation, there is no error on the face of the record and the Applicant is deliberately misrepresenting the judgment of the court to suit its desires. From a reading of the court's judgment, there is no ambiguity or error to be rectified;
- d) The Applicant has deliberately misled the Court that the parties consented to confer jurisdiction on the Court;
- e. The application is a mischievous attempt to appeal the order of the Court;
- f. The prayers sought are an affront to Article 22 of the Constitution which provides for representative suits.

Ruling by the Court

4. The powers of this Court to review its own decisions are donated by Section 16 of the Industrial Court Act, 2011 and Rule 32 of the Industrial Court (Procedure) Rules, 2010.

5. Rule 32(1) provides as follows:

32. (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;

6. In considering an application for review, the Court must always guard itself against the danger of sitting on appeal over its own decision. As held by **Tanui J** in ***Njoroge and 104 Others (Suing in Representative Capacity for Kariobangi South Civil Servants Estate Tenant Purchase) v Savings and Loans Kenya Ltd & Another [1988] ECLR*** and by **Ngugi J** in ***Anders Bruel T/A Queen Cross Aviation v Kenya Civil Aviation Authority & Another [2013] ECLR*** an erroneous view of evidence or the law though a good ground of appeal, cannot be the basis of a review.

7. The Respondent disagrees with the interpretation assigned by the Court to Section 12 (1) of the Industrial Court Act, 2011 and by its application for review asks the Court to reconsider its position on the matter. This Court has no power to do that. If it made a mistake in its interpretation, it cannot correct itself; only the Court of Appeal can correct it. The Respondent's application for review therefore fails and is dismissed with costs to the Claimants.

8. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JULY 2015

LINNET NDOLO

JUDGE

Appearance:

Mr. Change for the Claimants

Mr. Oyatsi for the Respondent