



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 875 OF 2012

JOB K. MURIUKI.....CLAIMANT/APPLICANT

VERSUS

MADA HOTELS LIMITED.....RESPONDENT

RULING?

1. The Claimant/Applicant's application dated 29th April 2015 seeking review of the Court's decision to dismiss the Claimant's earlier Notice of Motion seeking to reinstate the suit. The Application was urged on 15th June 2015 by Mrs. Kerio for the Claimant. She submitted that the Claimant desired that justice should be administered without technicalities and relied on Section 45(1) of the Civil Procedure Rules, Article 159(2)(a) & (d) of the Constitution of Kenya and Section 20 of the Industrial Court Act. The Claimant deposed that he had come to Court and was asked to attend Court 301 and when the Ruling was delivered it was realised that he was not advised properly in that counsel had advised him the matter was in Court 301 and that it was counsel's error and the mistake of counsel should not be visited on him. Counsel relied on the case of **Paul Mwangi v Rhoda Wanjiku Njuguna** where Sergon J. held that a mistake of counsel should not be visited on the litigant. She also placed reliance on the case of **James Mangeli Musoo v Ezeotec Limited** where Njagi Marete J. held that a Court should act without undue regard to technicalities.

2. The Respondent was opposed and filed a Replying Affidavit sworn by Paramjeet Singh Mhajan on 3rd June 2015. He deposed that the application was not merited and that the Claimant had lied to Court and further that the Court could not sit on appeal of its own decision. Mr. Ochwo for the Respondent urged the reply when the application came up. He submitted that the Claimant had relied on provisions of the Civil Procedure Act and Rules but that reviews in this Court have to be brought under Rule 32 of the Industrial Court (Procedure) Rules. He submitted that the Claimant had not properly invoked the Rules of this Court and that the application did not have a memorandum. He stated that even in substance the application is lacking as the Court was being asked to reconsider the application for setting aside filed on 11th February 2015. He submitted that the Court is *functus officio* as regards the application. He submitted that the only aspects that would lend themselves to a review are the discovery of new and important matters, an error apparent on the face of the record or on account of the ruling or award being in breach of any law or finally, any other sufficient reason. He submitted that the authorities relied on ought to have been relied on in the earlier application. He stated that there is no technicality involved in this case and that this case involved perjury which the Court should frown upon and not admit. He relied on the case of **Mumby's Food Products Limited & 2 Others v Co-operative Merchant Bank Limited Civil Appeal No. 270 of 2002** (unreported) where the Court of Appeal (Bosire, Githinji & Deverell JJ.A) held that it is not sufficient that an applicant is dissatisfied. The application for review is very limited to correcting an

error.

3. In matters review, the Industrial Court (Procedure) Rules 2010 provide as follows under Rule 32.

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; 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.

(3) A party seeking review of a Court decree or order of the Court shall apply to the Court in Form 6 set out in the First Schedule.

(4) An application under paragraph (3) shall be accompanied by a memorandum supporting the application and the Court shall proceed to hear the parties in accordance with section 26 of the Act.

(5) The Court shall, upon hearing an application for review, deliver a ruling allowing the application or dismissing the application.

(6) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(7) An order made for a review of a decree or order shall not be subject to further review.

4. The Claimant has not brought the application under these provisions of the law. There ought to be 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 on account of some mistake or error apparent on the face of the record; or on account of my ruling being in breach of any written law; or that the ruling requires clarification; or for any other sufficient reasons. The Claimant should have brought he application within the confines of these boundaries of the law. The Civil Procedure Act and the Rules made thereunder can only be a refuge, albeit only in fitting circumstances, in instances when there is *lacunae* in the procedures under this Court's rules. The Claimant has instead cited issues of technicality which to my mind are far removed from the matter at hand. The Court made a pronouncement on 15th April 2015 and is *functus officio*. There is no technicality in that.

5. In the case of **National Bank of Kenya v Ndungu Njau [1997] eKLR** cited with approval in the case of **Mumby's v Co-op Merchant Bank** (supra) the Court of Appeal held that

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.

Misconstruing a statute or other provision of law cannot be a ground for review.

6. There are no grounds for review, the Claimant had his bite of the cherry, lied to Court on oath and a Ruling delivered dismissing his application. Nothing has been brought to Court that would entitle the Claimant to the review orders he seeks. The application is unmeritorious and is dismissed with costs to the Respondent.

Orders accordingly.

Dated and delivered at Nairobi this 21st day of July 2015

Nzioki wa Makau

JUDGE