



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO 2388 OF 2012
TRANSPORT WORKERS UNION CLAIMANT
VS
PUMA WHOLESALERS LIMITED RESPONDENT

Mr Mathenge for Respondent / Applicant

Mr Nasib Makua for Claimant / Respondent

RULING

1. Serving before Court is an application for review of the Judgment of the Court delivered on 4th December 2014, by Hon. Maureen Onyango J.
2. The memorandum in support of the Application for review outlines the grounds for review thus;
3. That the hearing of the case on 7th October 2014, proceeded exparte in the absence of the Applicant's Counsel who inadvertently failed to diarize the hearing date of the matter.
4. That the Applicant has always been ready and willing to testify in the case and has a cogent defence against the Claimant / Respondent.
5. The Applicant urges the Court to allow the Application for review of the Judgment.

Response

6. The Claimant / Respondent, filed objection to the Application for review of Judgment the butt of which is as follows;

That the reason advanced by the Applicant for the review of the Judgment of the Court is weak, frivolous and

vexatious and same is intended to delay payment of terminal benefits awarded by the Court.

7. The Court was informed by the Advocate for the Claimant that, he personally served the Respondent's Advocate Mr. Karanja with the Hearing Notice for the 7th October 2014 who assured him that he would attend Court.
8. The Advocate for the Claimant, informed the Court that he reminded the Respondent's Advocates of the hearing date by email communication.
9. The Trial Judge on this basis allowed the case to proceed ex-parte. The Trial Judge none the less considered the Statement of Defence filed by the Respondent / Applicant on 12th March 2013 as

- seen on page 3 of the Judgment of the Court before finding in favour of the Claimant on the merits of the case.
- 10.The Advocate for the Respondent / Applicant in his supporting Affidavit did not address at all the matters regarding service canvassed by the Trial Judge in her Judgment.
 - 11.The Advocate has completely evaded the fact that he was properly served with the hearing notice by the Advocate for the Claimant and that the Advocate for the Claimant further reminded him of the hearing date vide an email.
 - 12.The Trial Judge noted in her Judgment that the case was first adjourned on 31st July 2014 upon application by the Respondent / Applicant and concession by the Counsel for the Claimant.
 - 13.The case was again fixed for hearing on 7th October 2014. Mr. Karanja had been invited to take a hearing date on 16th December 2013 at 10 a.m. by a letter dated 27th November 2013. The letter was received and stamped by the said firm of Advocates on 4th December 2013. However the Advocate for the Respondent / Applicant did not attend the fixing of the hearing date on 16th December 2013 and the Claimant took the date ex-parte.
 - 14.A hearing notice was served and received by the Respondent's Advocates on 22nd September 2014 advising of the hearing date on 7th October 2014.
 - 15.That the grounds used by the Respondent / Applicant's Advocate that he failed to diarize the hearing date is unheard of and spurious at best.
 - 16.That Rule 32 of the Industrial Court (Procedure), Rules 2010, do not provide for review of Court's decision on the ground advanced by the Respondent / Applicant.

Determination

- 17.In the Judgment, the Trial Judge noted that when the case first came up for hearing on 31st July 2013, the Advocate holding brief for Mr. Karanja for the Respondent / Applicant sought adjournment on grounds that Mr. Karanja was not invited to take the hearing date and was involved in Nyeri HCC 260 of 2012 which had been fixed for hearing earlier. The Judge further noted that the Advocate for the Respondent / Applicant was properly served with the Hearing Notice for the 7th October 2014.
- 18.The Application is bare and contains no justification for the review or setting aside of the Judgment of the Court.
- 19.The Court notes further that, the ex-parte hearing of the case was on 7th October 2014 but the Application was brought on 30th January 2015 more than four (4) months from the date the case was heard.
- 20.The Judgment was delivered on 4th December 2014 and the Application came almost two months later. This delay which has not been explained is inordinate.
- 21.This Application has not been brought expeditiously and is only meant to delay the enjoyment of the fruits of the Claimant's Judgment.
- 22.On these grounds the Court finds that the Application lacks merit and same is dismissed with costs to the Claimant / Respondent.

Dated and Delivered at Nairobi this 25th day of September 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE