



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2101 OF 2012

BERNARD AMUKAKA LUDESHI.....APPLICANT

VERSUS

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....RESPONDENT

RULING

1. The claimant herein by an application dated 19th March, 2015 seeks review of the Court's ruling delivered on 13th February, 2015.
2. In support of the application the claimant avers in this main that:-
 - (a) That there are issues that are brought out in this Application for Review which issues were either not canvassed during the hearing that culminated to the ruling now the subject of review, or might not have been within the preview of the judge as to adequately inform him to arrive at a just ruling.
 - (b) That there was an error in the face of the ruling delivered on 13th February, 2015, which error might not have been placed in perspective by the Hon. Judge, now leading to the review of the Ruling.
 - (c) That he believes that the Hon. Judge may not have been privy to the events that led to the recording of the consent order on the 16th of July 2014 and modified in a further consent order on the 18th of July 2014.
 - (d) That there was a valid ruling and a Decree in place as a result of the ruling issued on the 4th March 2014, that none of which had been satisfied as attested to and also by a letter of complaint lodged by the Applicant herein this matter on 16th day of February 2015, against the sitting Judge's decision given on the 13th February 2015.
 - (e) That following the ruling and the subsequent decree drawn from the said ruling, both parties recorded a Consent which consent the respondent has failed to comply with.
 - (f) That there was a consent Order in place and a further one modified on the 18th of July 2014, which consents the respondent had completely failed to adhere to hence same is contemptuous to the Hon. Court process and the rule of law.

That the Applicant's apprehension that the sitting Judge may as well not have adequately conceptualized the file before him leading to the said Judge to error on the face of the law as pertains the ruling as is now being reviewed.

(g) That in an apparent move to either delay the above proceedings and or delay justice, the Applicant's counsel as on record seemed to have connived with the Respondent's counsel, wittingly indicated that there was a Civil Appeal Number 71 of 2014, when in essence, there only existed a Civil Application Number 71 of 2014 as per Court record.

(h) That the Applicant's avers that the Respondent have changed their position on this matter and in particular the consent order which they have failed to comply with following their erroneous reference to the Civil appeal number 71 of 2014 instead of Civil Application Number 71 of 2014 and hence are in contempt of Court Order dated 16th July 2014.

(i) That the Applicant's avers that the erroneous consent as entered into by the parties to the agreement to have the decretal Amount deposited in the counsels joint account in eight equal monthly installments, was to act as security pending the finalization of the Civil Application Number 71 of 2014 that was filed, and partly heard.

(j) That by the assertion of the averments of the sitting Hon. Judge, the said clause and or miscommunication by the counsels, ought to have further fully informed the Hon. Judge's opinion to annual and clause on merit for justice to be seen having been applied on merit to both Parties in the suit.

3. The respondent opposed the application stating in the main that the same is incompetent and disclosed no single ground or ingredient for review of the ruling of the Court.

4. The ruling of this Court which was delivered on 13th February, 2015 was based on the application dated 21st November, 2014. As observed in that ruling, the effect of the application if allowed, would have been to permit the applicant to proceed with execution of the decree issued by the Court on 4th March, 2014.

5. The application had more or less grounds as the instant application in that the claimant who was by then represented by Mr. Nyabena complained that the respondent had refused and or failed to comply with the consent order recorded on 16th July, 2014 hence the Court should order execution of the decree.

6. An application for review under Rule 32 may be brought if there is discovery of a new and important matter or evidence which after the exercise of due diligence was not within knowledge of the person or could not be produced by that person at the time when the decree was passed or the order made. A review may also be made by the Court on account of mistake or error on the face of the record or on account of the award, judgment or ruling being in breach of any written law.

7. I have reviewed the grounds upon which the present application has been brought and it would seem to me to be an attempt by the claimant to have a re-hearing of the application dated 21st November, 2014. The complaints in the present application formed the substance of the application dated 21st November, 2014 and submissions by Counsel then on record for the claimant.

8. I had occasion to hear and analyse the said application as well as submissions by Counsel for the claimants and respondent and rendered myself the way I did in the ruling sought to be reviewed by the claimant now acting in person. I may have been wrong in the claimant's view but in my mind that is discretionary error which is the essence of a ruling or judgment. This is not a ground for review especially where the applicant for review has not alleged or shown that the discretion was exercised contrary to any law.

9. The complaints by the claimant seem to me to be matters that can form the substance of an appeal.

The Court is therefore not persuaded that the application is merited and hereby dismisses the same with costs.

10. It is so ordered.

Dated at Nairobi this 15th day of October 2015

Abuodha J. N.

Judge

Delivered this 15th day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge