



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 806 OF 2013

BENJAMIN MUKUVI MUOKI.....CLAIMANT/RESPONDENT

VERSUS

JAY SCRAP DEALERS.....RESPONDENT

RULING

1. The motion dated 19th January, 2015 by the respondent seeks review of this Court's Judgment delivered on 25th November, 2014. The application is brought on the grounds that:-

(a) The claimant/respondent was unable to prove all the allegations as brought against the applicant of unfair dismissal and non-payment of terminal dues.

(b) The applicant did not terminate the services of the claimant as found by the Court and so the latter is not entitled to one month's salary in lieu of notice.

(c) The applicant was able to prove to the Court that the claimant fled after the theft incidence and in such circumstances an environment for the demand and payment of terminal dues was absent.

(d) That being the case then the applicant feels it is unfair for him to bear the costs of this suit and in the alternative is of the opinion that the claimant ought to meet the costs of this suit.

(e) That if the claimant/respondent is allowed to execute the applicant herein will suffer irreparable loss and damage.

2. The respondent opposed the application through grounds of objection filed on 27th February stating that the application was incompetent and further that it disclosed no single ground or ingredient for review of the Courts Judgment.

3. Rule 32 of the Court's Rules provides as follows concerning review:-

(a) If there is 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, judgment or ruling requires clarification; or
- (e) for any other sufficient reasons.

4. I have reviewed the present application vis-à-vis the foregoing provisions of the Court's Rules and I am not persuaded that it meets the parameters for review as contemplated by the Rules of the Court. The grounds of complaint set out in the body of application as well as supporting affidavit seem to me to be grounds upon which the respondent is aggrieved by the Judgment of the Court. These are in essence grounds of appeal and not review. In circumstances the Court is not persuaded that the orders sought are merited and hereby dismisses the application with costs.

5. It is ordered.

Dated at Nairobi this 2nd day of October 2015

Abuodha J. N.

Judge

Delivered this 2nd day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge