



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 659 OF 2010**

PARMENAS KATHURI NGARI .....  
.....CLAIMANT

VERSUS

AGS WORLDWIDE MOVERS (K) LTD  
.....RESPONDENT

Ms. Vera Abongo h/b for Mr. Ashiruma of Ashiruma & Company Advocates for the Claimant.

Mr. Cecil Kuyo of M/S Ochieng, Onyango, Kibet & Ohaga Advocates for the Respondent.

**RULING**

On 22<sup>nd</sup> December 2011 the Claimant filed his application for review of the award herein together with the affidavit in support. The application was heard on 2<sup>nd</sup> May 2012.

The Claimant submitted that there was overwhelming evidence in support of the review as the court failed to appreciate that the Claimant’s duties ended with the delivery of the Respondent’s containers to the Kenya Ports Authority ICD at Embakasi. He cannot therefore be held responsible for the delay in shipment of the containers. He was also not awarded salary for March 2010 which had been pleaded.

Mr. Kuyo for the Respondent argued that the Claimant has not met the requirements for review under section 32 of the Industrial Court (Procedure) Rules 2010. No new evidence has been advanced. The court fully considered the issue of the Claimant’s duties and rightly concluded that the Claimant was under duty to report to the Respondent information regarding delays in the shipment of the containers. The issue of unpaid salary was not pleaded. He urged the court to dismiss the application.

I have carefully considered the Claimant’s application and the parties submissions. Section 32 of the Industrial Court (Procedure) Rules 2010 provides for review in the following circumstances;

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.”

I agree with the Respondent that the Claimant has failed to establish any of the aforesaid grounds for review. No new matters which could not have been brought to the court’s attention have been raised. The court fully considered the Claimant’s duties and found him guilty of dereliction of duty by failure to monitor the progress of the shipment of the Respondent’s containers. The only avenue open for the Claimant in this regard is to appeal against the decision and not to seek review.

I agree with the Respondent that the issue of one month’s salary was not pleaded. The Constitution, the Industrial Court Act 2011 and the rules governing the court mandates the court to eschew technicalities.

Although the claim for salary was not pleaded, I find that the Claimant who was dismissed on 2<sup>nd</sup> March 2010 is entitled to pay for the two days worked in March 2010. I cannot deny him this right although the same was not pleaded. It is illogical to ask the Claimant to file a fresh suit to claim this small claim. I find that this is a fitting case for the exercise of the inherent powers of the court to make any order that seems to promote the cause of justice in any matter before it.

On the foregoing premises, the Claimant’s application for review succeeds but only to the extent that the Claimant is paid two days salary for March 2010 in addition to the payments ordered in the award. The court makes no orders as to cost.

Written by Hon. Justice Paul Kosgei in May 2012.

Read in open Court this **20<sup>th</sup>** day of **February** 2014

**Justice Maureen Onyango**

**JUDGE**

In the presence of:

**PARMENAS KATHURI NGARI** Claimant in person

**ROTICH H/B FOR ABIDHA** for Respondent