REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 307 OF 2010

DANIEL MWANGI……...…..……CLAIMANT

VERSUS

MR. PRAVIN……1ST RESPONDENT

MR. PRAMOD……...…….....2ND RESPONDENT

M/S VASTU COMPANY LIMITED…….....……..……..…3RD RESPONDENT

RULING

1. The application before this Court is dated 7th November 2013 by M/S Onindo Onindo & Associates. In it, the Claimant seeks review of the judgment of this Court. The Claimant through his new lawyers seek to re-open the case, hearing *de novo* and a judgment given. He has sworn a supporting affidavit in which he reiterates admission of claims of Kshs. 24,000/= by the Respondent.

2. The Respondent is opposed and filed a Replying Affidavit sworn by Navinbhai Patel. In it he deposes on information and advice that the application is defective and does not conform to the Rules of this Court. The deponent further avers that the matter proceeded to determination after directions were taken by the Court wherein parties consented to the Court writing the judgment based on evidence filed by parties herein as is permitted under the Industrial Court (Procedure) Rules 2010.
3. Mr. Onindo urged the application before me on 24th February 2014. He stated that the award dismissing the Claimant's claim should be set aside as evidence was not taken. He submitted the Claimant ought to have given oral evidence in Court as that would have given parties the opportunity to challenge the evidence in cross-examination on the facts and on the issues. The Claimant also submitted there were admissions on various amounts and the exercise amounted to half trial or mistrial. He urged the Court to overlook the issues raised by the Respondents as Article 159 provides that the Court should not give precedence to technicalities. Mr. Onindo thus submitted that his client had good grounds to review and the Court should allow the application as prayed.

4. Mr. Mokeira for the Respondent opposed the application and submitted that there was no application for the taking of vica voce evidence by the advocate for the Claimant on record at the time. The application, it was further submitted does not conform to the Industrial Court (Procedure) Rules and is not in Form 6 of the First Schedule. Mr. Mokeira submitted that the

Application is defective and that regarding the *de novo* hearing is not supported by the Industrial Court (Procedure) Rules. He thus prayed that the application be dismissed with costs.

5. I reserved my Ruling to today and proceed to render it. The Claimant herein Mr. David Mwangi was represented by M/S Nyabena Nyakundi Advocates in the trial. The matter proceeded before the predecessor of this Court, Judge Chemmuttut presiding, and Court record indicates that on 5th May 2011 there was a hearing at which the evidence was tendered. The proceedings indicate the Claimant was represented by counsel. His claim was articulated. The Respondent was equally represented and they too had their counsel articulate their case. Prior to setting down the matter for delivery of judgment on notice, the Court granted the counsel for Mr. Mwangi opportunity to amend the claim. The matter finally appeared before me on 20th May 2013 and there was an indication that the parties were in agreement that this Court could proceed to determine the claim on the basis of the evidence and submissions before Court as well as pleadings filed. The decision of the Court was delivered on 14th June 2013 whereat I dismissed the Claimant's case, thus provoking this review application.

6. The Industrial Court (Procedure) Rules 2010 provides under Rule 21 thereof as follows:

21. The Court may subject to an agreement by all parties proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties.

This Court did not fall into any error, there was no mistrial and quite evidently there was no half trial. The case was heard and a determination given in accordance with the law. On that score there is no need to reopen trial. Regarding the *de novo* hearing, it is true that this Court does not have provisions for that but if circumstances permit at the time of directions a party can opt to re-start the case. The Claimant and Respondent opted to proceed and thus cannot resile from that agreement.

7. The Claimant correctly pointed out that there was an admitted sum of 24,000/= which the Respondent stated was owed. Mr. Mokeira correctly demonstrated that the application was not in conformity with the Rules of this Court. The Court is guided by the Constitution and the relevant laws in this land. Whereas Article 159(2)(d) of the Constitution provides that justice shall be administered without undue regard to technicalities, the rules are hand maidens of justice. She should not walk without her hand maids as to do so would be to render the administration of justice chaotic. What the Constitution bars is undue regard to technicalities. Giving due regard to the technicalities it is obvious the Review application is fatally defective.

8. Are my hands tied to the extent I cannot grant relief to the Claimant where its merited? I do not think so. In the case Pramodrai Patel in an affidavit sworn on 10th October 2011 admits the Claimant is owed a sum of 24,000/= being balance for salary in August, September and October – 4,000/= and leave pay of 20,000/=. In the interests of justice I order and direct that the Respondents do pay the sum of 24,000/= due to the Claimant as an admitted sum within 14 days of today.

9. The Review application on the whole collapses and is not fit for grant. There will be no orders as to costs.

Orders accordingly.

Dated and Delivered at Nairobi this 24th day of March 2014

Nzioki wa Makau

JUDGE