



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1804 OF 2013

SERA MUTHONI MUTUA.....CLAIMANT

VS

ARMUT INTERNATIONAL.....RESPONDENT

RULING

1. On 21st January 2014, I delivered a ruling in which I directed the Respondent to deposit the sum of Kshs. 1,000,000 as security in this case. The Respondent then came to Court by way of Notice of Motion dated 18th February 2014 seeking review of the ruling and order of the Court. The application is supported by 3 affidavits sworn by the Respondent's Director General, Bholah Sah on 18th February 2014, 19th February 2014 and 6th March 2014.
2. The Respondent's application is based on the following grounds:
 - a. That the Claimant's claim for Kshs. 1,521,329 is grossly exaggerated taking into account the Claimant's salary and length of service;
 - b. That the Court failed to take into account that the Claimant's claim that she was the Respondent's employee from 2003-2006 which forms the bulk of her claim is disputed by the Respondent;
 - c. That the termination of the Claimant's employment was effected fairly in accordance with the provisions of her contract of employment and the Employment Act;
 - d. That the Claimant's claims for unpaid NHIF, NSSF and PAYE are not sustainable;
 - e. That the sum of Kshs. 1,000,000 ordered to be deposited as security is not realistic and/or proportional to the Claimant's claim and/or to a likely award by the Court;
 - f. That the Respondent is entirely reliant on donor funding for all its projects and all such funds are earmarked and the Respondent does not have any funds to spare;
 - g. That the Respondent has a good defence to the Claimant's claim and the requirement for security deposit amounts to condemning the Respondent unheard.
3. In a replying affidavit sworn by the Claimant, it was deposed that the Respondent's application was fatally defective as it had not complied with Rule 32 of the Industrial Court (Procedure) Rules, 2010. Further, the issues raised in the current application were similar to those raised by the Respondent and considered by the Court in the ruling delivered on 21st January 2014. These issues were therefore *res*

judicata. The Claimant further depones that the grounds relied on by the Respondent in the current application are in actual fact grounds for appeal.

4. The power of the Industrial Court to review its own decisions is donated by Section 16 of the Industrial Court Act, 2011 and Rule 32 of the Industrial Court (Procedure) Rules, 2010.

5. Rule 32(1) provides as follows:

32. (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.

6. According to the written submissions filed on behalf of the Respondent on 24th March 2014, the Respondent's application for review is based mainly on the grounds that new and important matters have emerged and there are sufficient reasons for review.

7. The affidavits sworn by Bholu Sah in support of the Respondent's application and the written submissions filed by Counsel for the Respondent rehash the issues that were the subject of the application by the Claimant dated 6th November 2013 which issues I fully considered in reaching my decision of 21st January 2014.

8. To my mind, the Respondent's application is tantamount to asking the Court to reconsider the evidence afresh and reach a different decision. I do not think that this Court has the power to take that course. In the case of ***National Bank of Kenya Limited Vs Ndungu Njau (Civil Appeal No 211 of 1996)*** the Court of Appeal held that a trial court has no power to review matters that have been fully canvassed before it.

9. Moreover, in the affidavits sworn by Bholu Sah and submissions filed in support of this application, the Respondent has demonstrated that it will not honour an award in favour of the Claimant thereby confirming the Claimant's apprehension.

10. For the foregoing reasons, I find no reason to interfere with the ruling and order of this Court issued on 21st January 2014 which are hereby confirmed. The Respondent's application for review is consequently dismissed with costs to the Claimant.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF APRIL 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*