

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1902 OF 2011

PATRICK NYAKUNDI

CHRISTOPHER ONGOTO.....CLAIMANTS

versus

**KENYA NATIONAL UNION OF TEACHERS (KNUT
HEADQUARTERS)**

KENYA NATIONAL UNION OF TEACHERS (KISII BRANCH).....RESPONDENTS

RULING

1. The matter before me are two Applications dated 18th February 2014 and 20th January 2014 which seek a review of the judgment made on 10th January 2014. The said Applications are supported by Memoranda of Review and the supporting Affidavits of the Claimants herein.
2. The case made out is that the Judgment made herein was made without consideration of a consent order made in the High Court before Sitati J. wherein the 1st to 6th Respondents in the previous suit HCCC 209 of 2006 and 210 of 2006 which had been consolidated were substituted by the present Respondents. The Claimants have demonstrated that vide a consent order dated 15th March 2010 the Application seeking to amend the Complaint was allowed which saw the striking out of the names of the 1st to 6th Respondents in the suit.
3. The Court made an error in overlooking the substitution of parties since the Claim was found deficient in respect of the suit against the officials who had been removed. The Judgment of 10th January 2014 was therefore against parties who were no longer part of the suit. The 1st to 6th Respondents had been substituted by the order aforesaid. Proceeding to find as the Court did was erroneous thus bringing the Judgment within the purview of Rule 32 of the Industrial Court (Procedure) Rules 2010. In view of the provisions of Rule 32 and Section 16 of the Industrial Court Act which were cited by Mr. Owuor counsel for Mr. Ongoto, the Court *ex debito justitiae* reviews the Judgment to the extent that the evidence that had not been adduced by Mr. Christopher Ongoto be adduced and a date for judgment be set after the said evidence is taken. The Judgment of the Court will be against the two Respondents Kenya National Union of Teachers (Headquarters) and Kenya National Union of Teachers Kisii Branch.
4. There will be no order as to costs as the error was on the part of the Court.

Orders accordingly.

Dated and delivered at Nairobi this 5th day of May 2014

Nzioki wa Makau

JUDGE