



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 971 OF 2011

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....CLAIMANT/APPLICANT**

versus

**PEMBE FLOUR MILLS
LIMITED.....RESPONDENT**

RULING

1. The Claimant/Applicant seeks Review of the Ruling of this Court. The Claimant's Application was precipitated by a decision of this Court made on 30th November 2012 which the Claimant now seeks to have reviewed. The decision related to a collective bargaining agreement between the Claimant/Applicant and Respondent. The Respondent is opposed.
2. The Claimant/Applicant filed the Review Application on 24th December 2012. In the Memorandum supporting the Review, the Claimant submitted that the decision required to be reviewed as the percentage increase indicated in the Court's Ruling was erroneous. Additionally the Claimant sought a review of the decision as the name of counsel appearing for the Respondent was indicated as Mr. Ndege yet Mr. Ambenge is the one who had appeared in the proceedings before the Court. The Review was sought in relation to the increments made in the CBA as reflected against the General Wages Order. Mr. Nyumba appeared for the Respondent and urged the Court to review its decision in line with the Claimant's Review Application dated 19th December 2012.
3. Mr. Ambenge in his Memorandum of Response to the Review Application averred that the threshold under Rule 32 was not met by the Claimant. Additionally the Claimant had not adduced sufficient justification to warrant a review of the decision of the Court in that no new evidence had been adduced, no issue was raised with respect to breach of law or want of jurisdiction. It was averred there was re-litigation and contestation of the old evidence.
4. The Rules of this Court provide the scenarios when a review can be available to a party. Rule 32 of the Industrial Court (Procedure) Rules 2010 makes provision 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.

(2) An application for review of a decree or order of the Court under subparagraphs (b),(c), (d), or (e), shall be made to the judge who passed the decree, or made the order sought to be reviewed.

(3) A party seeking review of a Court decree or order of the Court shall apply to the Court in Form 6 set out in the First Schedule.

(4) An application under paragraph (3) shall be accompanied by a memorandum supporting the application and the Court shall proceed to hear the parties in accordance with section 26 of the Act.

(5) The Court shall, upon hearing an application for review, deliver a ruling allowing the application or dismissing the application.

(6) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(7) An order made for a review of a decree or order shall not be subject to further review.

5. The Rule above makes it plain that a party seeking review must have met a set criteria which is enumerated in the Rule and sub-rules. The party seeking the review must be in possession of material which shows that 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 award or decree was passed or the order made; or that the review is sought on account of some mistake or error apparent on the face of the record; or that it is sought on account of the award, judgment or ruling being in breach of any written law; or where the award, judgment or ruling requires clarification; or where there is any other sufficient reason or reasons.

6. On my part, I am emboldened by the provisions of statute to hold that review can only lie where grounds as availed in statute exist. In the case before me except for an error apparent on the face of the Ruling of 30th November 2012, it seems I am being asked to sit on appeal against my own judgment. I cannot do so. What the Claimant ought to have done is appeal my decision if they felt that I had failed to appreciate the case as I should have or if I came to the decision by considering matters I ought not to have or applying the wrong law. I find comfort in the case of **National Bank of Kenya Limited v. Ndungu Njau [1997] eKLR**, the Court of Appeal where the Appellate Court Kwach, Akiwumi and Pall JJA held that:

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

7. The finding above agrees with the provisions of Rule 32 of this Court. I would correct the error on the face of the record where I refer to Mr. Ambenge as Mr. Ndege at pages 3, 4 and 5. The record should reflect Mr. Ambenge as counsel. Nothing else turns on the Application. It does not meet *strictu sensu* with the provisions of Rule 32 of the Court Rules.
8. The upshot of the foregoing is that application for Review is not fit for grant as the Review Application woefully fails to meet the threshold for Review. It is dismissed with costs to the Respondent.

Orders accordingly.

Dated and delivered at Nairobi this **4th** day of **June** 2014

Nzioki wa Makau

JUDGE