



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 2293 OF 2012

TRANSPORT WORKERS UNION.....CLAIMANT

VS

HAJJI ISSA ADAMS & SONS LIMITED.....RESPONDENT

RULING

1. The Claimant's application dated 14th October 2013 seeks review of the award delivered by this Court on 17th September 2013. The main ground on which the application for review is based is that the Court failed to appreciate that the Grievant was not a casual employee.
2. The Respondent states that the Claimant's application lacks merit and should therefore be dismissed. In a replying affidavit and a further affidavit sworn by Karim Mussa Bux on 19th November 2013 and 24th February 2014 respectively, it is deponed that the Grievant was a casual employee as defined in the repealed Employment Act (Cap 226) which was the applicable employment law at the time the Grievant left the Respondent's employment.
3. The powers of the Industrial Court to review its own decisions are donated by Section 16 of the Industrial Court Act, 2011 and Rule 32 of the Industrial Court (Procedure) Rules, 2010.
4. 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;
5. The Claimant's application stems from its dissatisfaction with the finding of the Court that the Grievant was a casual employee as defined in the repealed Employment Act (Cap 226). While the Claimant is entitled to hold a different view, it seems to me that the decision rendered by this Court can only be challenged by way of an appeal in the Court of Appeal. To hold otherwise would be tantamount

to asking the Court to sit on appeal of its own decision.

6. The Claimant's application for review therefore fails and is dismissed with no order for costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF JULY 2014

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JUDGE

Appearance:

Mr. Nasib Makuwa (Union Representative) for the Claimant

Ms. Wachira for the Respondent