



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 39 OF 2013

(FORMERLY NAI CAUSE NO. 751/11)

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 18TH SEPTEMBER, 2014)

JARED OMONDI OBER 1ST CLAIMANT

JOHN OLUOCH ORINDA 2ND CLAIMANT

-VERSUS-

AMENDED COUNTY GOVERNMENT OF HOMA BAY RESPONDENT

RULING

The application before court is the one dated 8th July 2013 filed by the claimant applicants seeking orders for review. The application is based on the grounds that are not very clear.

The claimant applicants filed their memorandum of review and state that they wish to rely on the Collective Bargaining Agreement signed by the Association of Local Government Employers and the Kenya Local Government Workers Union. The memorandum went on to restate the claimants case but without bringing out the grounds upon which this court can review it's judgment delivered on 28.6.2013.

The respondents have filed their reply to the memorandum of review and it's submission and states that there is no new evidence warranting the review of this case. The parties have also filed their respective submissions upon which they want this court to rely upon in reaching it's determination.

The applicants submitted that they have now submitted the documents that were not previously at the disposal of the court and had the court been aware of them, it would have reached a different verdict. They also submitted that this court has powers to review it's judgment as it had erroneously relied on Public Service Commission Manual 2007 which had been overtaken by events instead of the one of 2008.

The respondents failed to file their submissions as expected. Under S. 16 of the Industrial Court Act 2011, the Industrial Court has powers to review it's judgments, awards, orders or decrees in accordance with the Rules. Rule 32(1) provides for the instances under which the court may review it's orders/judgments e.t.c.

Under Rule 32(1):-

“(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 ---”

The applicants aver that they have new evidence that they didn't produce at the time of the hearing and that the court erroneously relied on an expired Manual of 2007 instead of the one of 2008.

On account of this submission, this court finds that it would be in order if the parties would be allowed to present their alleged new evidence. It was also in error for the court to rely on the 2007 Manual instead of the 2008 one. The court therefore reviews its judgment passed on the 28.6.2013. The judgment is set aside. The court orders the case re-open to start *denovo* before another judge. The hearing to be set down within 3 months. Cost to be in the cause.

HELLEN S. WASILWA

JUDGE

18/9/2014

Appearances:-

Claimant applicants present

N/A for respondents

CC. Wamache