

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 69 OF 2013

PETER KARIUKI NJENGA.....CLAIMANT

VERSUS

TRANSNICK TRANSPORTERS LIMITEDRESPONDENT

R U L I N G

INTRODUCTION

1. The Claimant has brought Notice of Motion dated 16.7.2014 seeking review or setting aside of this court's judgment delivered on 6.12.2013. The Motion is supported by the affidavit sworn by the Claimant on 16.7.2014. The gist of the Motion is that the delay in filing the Suit within the statutory period was not intentional but because there was no industrial court in Mombasa.
2. The Respondent has opposed the Motion by filing grounds of opposition dated 26.8.2014. In summary, the respondent contends that the Motion as misconceived, totally defective, bad in law, frivolous and a gross abuse of the process of the court.
3. The Motion was disposed of by written submissions. The claimant's submissions suggested that the delay to file Suit in time was due to his Advocate's mistake and as such should not be visited on claimant. He is also stating that the delay should be excused because it was for less than 4 months.
4. The respondent on the other hand has urged that the suit should remain struck out because the court lacks jurisdiction to entertain a time barred suit.

ANALYSIS AND DETERMINATION

5. Jurisdiction is all what a court has over a dispute. If it has no jurisdiction, the court must down its tools. In the present case, the judgment being reviewed involved the striking out of the suit for being statute barred. No good cause has been shown to justify the review and setting aside of the said judgment. The fact that the delay was due to a mistake or otherwise on the part of the claimant's counsel or because there was no court in Mombasa is neither here nor there. The reason for striking out the suit was due to lack of jurisdiction and no evidence has been produced to prove that the jurisdiction of the court has now been reinstated.

DISPOSITION

6. For reasons above stated, the Motion under consideration is dismissed without costs.

Dated, signed and delivered this 7th November 2014.

O. N. Makau

Judge