



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 273 OF 2012**

MOSES OLUBANDWA WEMISIKO.....CLAIMANT/APPLICANT

VERSUS

UNGA LIMITED..... 1<sup>ST</sup> RESPONDENT

ESSENTIAL MANAGEMENT SERVICES LIMITED..... 2<sup>ND</sup> RESPONDENT

MANPOWER NETWORKS LIMITED..... 3<sup>RD</sup> RESPONDENT

**RULING**

1. The application before me is the Claimant/Applicant's Review of Application dated 7<sup>th</sup> August 2014. It seeks to review the Judgment of the Court and it is premised on Section 16 of the Industrial Court Act as well as Rule 32 of the Industrial Court (Procedure) Rules 2010. The Claimant/Applicant's grounds for review were to the effect that there was a discrepancy apparent on the face of the record and that the Claimant signed in acknowledgment of the receipt of the letter as well as the Certificate of Service and not in full and final settlement. He annexed an affidavit in support of the Review Application sworn on 7<sup>th</sup> August 2014.
2. The Claimant urged his Review Application on 13<sup>th</sup> November 2014. The Claimant urged the Court to allow the Application as he was surprised by the decision of the Court. He admitted that as far as the 1<sup>st</sup> Respondent was concerned he had tied his hands. He stated that for the 3<sup>rd</sup> Respondent there was indication that there was work done for 18 months and that was proof that he was entitled to recover. He submitted that the judgment was erroneous.
3. Mr. Kimili for the 2<sup>nd</sup> Respondent stated that the 2<sup>nd</sup> Respondent opposed the Review Application. He submitted there was no error on the face of the record. He stated that the Claimant admitted having cleared with the 1<sup>st</sup> Respondent whom the Claimant had joined as the 2<sup>nd</sup> Respondent had relocated. He submitted that the Claimant had not shown anything to support the contention there was an error on the face of the judgment requiring rectification. He submitted that the Claimant had not adduced any evidence to support the payments he sought during the hearing of his case and thus the Court ought to dismiss the Review Application with costs to the Respondents.

4. Generally a review is available to a party to proceedings before this Court. 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 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. The Claimant asserts there is mistake on the face of the record. In his grounds in support of the Review Application he points out that Mburu was not the advocate for the 2<sup>nd</sup> Respondent. After reviewing the decision I have noted two discrepancies that indicate an error on the face of the record. The name of the advocate for the 1<sup>st</sup> and 3<sup>rd</sup> Respondent's is misspelt as Mrs. Amaka instead of Mrs. Ameka and the name of Mrs. Maina is misspelt as Mr. Mburu. I would in exercise of the powers under Section 16 of the Act and Rule 32 of the rules of this Court amend the decision at para 5 to reflect the names of Mrs. Ameka and Mrs. Maina.

7. Other than the errata noted, there is nothing to suggest that decision made was in any way erroneous and capable of review for the grounds stated by the Claimant/Applicant. I note the Claimant admits signing the discharge voucher. Though he disputes the discharge, the Claimant signed that he had '**no other claims against the Essential Management Services Limited**'. The plain reading of this is an unequivocal discharge. I stated in my judgment that he cannot resile from his discharge. That position still obtains.
8. In sum, the application is devoid of merit and is dismissed but I will make no order as to costs.

Orders accordingly.

**Dated and delivered at Nairobi this 16<sup>th</sup> day of December 2014**

**Nzioki wa Makau**

**JUDGE**