

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 58 OF 2013

ISAAC OKOTH MARAMWA.....CLAIMANT

VERSUS

LOCHAB BROTHERS LIMITED.....RESPONDENT

[Before Hon. Justice Byram Ongaya on Friday 15th November, 2013]

RULING

The respondent **Lochab Brothers Limited** filed the Notice of Motion on 29.08.2013. The application was brought under **sections 1A, 1B and 3A of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010**. The main prayer is that the court do review and set aside its judgment delivered on 12th July, 2013 and further set aside the judgment delivered on 12th July, 2013 against the applicant.

The application was supported by the affidavit of Lloyd Timona Nganda. To urge the application, it was submitted that new and important matter was not given to the court at the hearing. The applicant relied on exhibit **LTN1** on the supporting affidavit being an extract from the police occurrence book being OB/10/8/2/010, OB/11/8/2/010 and OB/13/9/2/2010. It was submitted that the police record as produced showed that the claimant stole from the applicant. The applicant further relied upon exhibit **LTN2** on the supporting affidavit said to be the apology letters by the claimant confirming that he had stolen.

On the basis of that submission, the applicant urged the court to review the judgment and consequential to the review, to set aside the judgment and substitute orders dismissing the claimant's case. The claimant, Issac Okoth Maramwa opposed the application. He relied on his replying affidavit filed on 13.9.2013 and the further replying affidavit filed on 02.10.2013.

For the claimant now respondent in the application, it was submitted as follows:

1. The alleged theft and alleged statements by the claimant were issues which were dealt with at the hearing of the suit and the court considered the same in its judgment.
2. The annexures on the supporting affidavit and on the supplementary affidavit of Lloyd Timona Nganda filed on 24.9.2013 were dealt with at the hearing of the claimant's case as were all brought to the attention of the court during the hearing of the case.
3. The police records now produced in court showed that the claimant was not charged with any offence as far as the alleged theft was concerned and the applicant chose not to pursue it hence the claimant's release from the police cells.

In applications for review, this court is guided by the provisions of **Rule 32 of the Industrial Court (Procedure) Rules, 2010**. Under Rule 32 (1)(a), this court may allow a review of a judgment 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 the applicant for review or could not be produced by the applicant at the time when the decree was passed or the order made.

The documentary evidence by way of exhibits now produced for the applicant in the supporting affidavits were generated on diverse dates in 2010. The case was heard on 29.05.2013 and on 12.06.2013. No

reason has been urged for the applicant to explain why any of the documents were not produced at the hearing. On that account, the court finds that the application will fail.

The court has considered the documents exhibited on the supporting affidavits and finds that they do not raise any new evidence to justify varying the judgment as made. In particular, the court upholds its findings and observations at pages 5 and 6 of the judgment. The court further upholds its observation in the judgment at page 6 thus,

“(e) The respondent did not file in court any statement by the claimant of its internal investigations prior to or after the arrest of the claimant in relation to the alleged theft and as it appears to have been the practice that such statements are made by staff as shown by the claimant's previous statements filed in court on occasions of less serious misconducts than the alleged theft”.

In conclusion, the application by way of the Notice of Motion filed on 29.08.2013 is dismissed with costs.

Signed, dated and delivered in court at **Nakuru** this **Friday, 15th November, 2013.**

BYRAM ONGAYA

JUDGE