

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO.18 OF 2013

ERIC OCHIENG AMOLLOCLAIMANT

VERSUS

VISIONS INSTITUTE OF PROFESSIONALS LTDRESPONDENT

RULING

BACKGROUND

The respondent has brought a Notice of Motion dated 18/9/2013 seeking review or setting aside of this court's judgment delivered on 12/7/2013. The basis of the Motion is that the applicant has discovered new evidence which was not his knowledge before the judgment was passed and in addition, there is an error apparent on the face of the record. The Motion is supported by affidavit of Andrew Talam.

The claimant has opposed the Motion by his own affidavit sworn on 14/10/2013 the gravamen of which is that the applicant has not demonstrated the new evidence and the error allegedly apparent on the face of the record.

APPLICANTS SUBMISSIONS

The Motion was heard on 4/11/2013 when the applicant relied on written submissions filed on the same day. The applicant seemed to submit that the court made an error by awarding the claimant ksh.51619/ for bonus instead of ksh.8603.25. According to her that error entitled the applicant to an order for review and setting aside of the entire judgment.

RESPONDENTS SUBMISSION

Muyala for the claimant apposed the Motion. He submitted that no new evidence or error apparent on the face of the record has been demonstrated. According to him the judgment was based on the evidence tendered and there was no error made by the court.

ANALYSIS AND DETERMINATION

The court agrees with the claimant's counsel that the application is not well founded. It is an afterthought and frivolous. The question of bonus payable was answered by RW1 when he clarified to the court that the amount was 25% of the total earning for the 6 months semester. The court worked the quantum at ksh.51619.50. There was no error made. Last but not least the court notes that in addition to the Motion lacking merits the same is incompetent for want of for. It offends the express provisions of the Industrial Court Procedure Rules on the mode of moving the court for review.

DISPOSITION

The Motion is dismissed for the reasons above.

Signed dated and delivered this 6th day of December 2013

ONESMUS MAKAU

JUDGE