**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE MISC.APPLN. 165OF 2019**

**ARISING FROM LDA NO. 05/2017.**

 **SURE TELECOM . …………..APPLICANT**

**VERSUS**

 **BRIAN AZEMCHAP ……… RESPONDENT**

**BEFORE:**

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1. MS. ROSE GIDONGO**

**2.MR.RWOMUSHANA JACK**

**3. MR ANTHONY WANYAMA**

**RULING**

This application is made under section 40(2) of the Labour Disputes (Arbitration and Settlement) Act 2006, section82 of the Civil Procedure Act, cap 71 of the law s of Uganda , section 33 of the Judicature Act cap 13 (as amended by order 43 and 52(1) and (3) of the Civil procedure Rules SI 71-1 seeking review of the award of this court made on …..on the following grounds:

1. That the honourable Court entered an award in the matter of **Brain Azemchap vs Sure Telecom LDA No.005 of 2017.**
2. That there are errors apparent on the face of the record
3. That the said errors resulted in miscarriage of justice
4. That the applicant will suffer significant loss if the application is not granted
5. That in the interest of justice and equity this application should be granted

The affidavit in support of the application is to the effect that:

1. The panel having held that the court had no power to determine the question of fact, without the Respondent making an application to appeal on facts, went ahead to determine the question of fact and mixed law and fact
2. The panel went ahead to determine the questions of fact based on evidence when there was no record of appeal.
3. That the court determined the appeal based on general ground of Appeal to the detriment of the Respondent/Applicant
4. That the amount awarded to the Respondent was not based on any objective calculation justified by the Respondent

in reply

submissions

**DECISION OF COURT**

Section 82 of the Civil Procedure Act cap 71 provides that any person aggrieved by a decree or order from which an appeal is allowed but no appeal has been preferred or by a decree or order which no appeal is allowed, may apply to the court which passed the decree or order for a review of the judgement.

*Order 46 rule 1 of the Civil procedure Rules provides that:*

1. *Any person considering himself or herself aggrieved*
2. *By a decree or order for which an appeal is allowed, but from which no appeal has been preferred; or*
3. *By decree or order from which no appeal is hereby allowed and who from discovery of new and important matter of evidence which after the exercise of due diligence was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgement may apply to the court which passed the decree or order for review.*

For a court to be moved to review its decree or order the applicant must prove that:

1. He or she had discovered new and important matter of evidence which in spite of the exercise of due diligence was not within his knowledge at the time of the judgement or decree was entered
2. There is an error on the face of the record, the error must be manifest and clear and no court would remit such an error to remain on the record such as a wrong application of the law or failure to apply the appropriate law(see **FX Mubuuke vs UEB HCMA No. 98/2005.**
3. That there is sufficient cause to warrant the review of the decree similar to discovery of new evidence or an error apparent on the record.

 From the perusal of the application , the affidavits in support and in opposition and both counsels submissions we find that whereas the applicant states that there are errors apparent on the record, which is if not addressed will occasion a gross miscarriage of justice, on the contrary the grounds would require elaborate argumentation and investigation, to establish the errors. It is apparent that Counsel in his submissions made elaborate argumentation to prove the purported errors, contrary to the principle that the error or mistake must be apparent, manifest or self- evident with no need to prove its existence as is the case in the instant application.

 It is trite that reviews are strictly meant to correct self- evident errors or omissions on the part of the court, because once a decree or order is issued a court is rendered functus officio. A review is an exception intended to correct apparent errors and not to change the decision of the court. As stated in **Lalwak Alex vs Opio mark miscn Aplln. No 0058/2016,** ***“… if the court reached a wrong conclusion of law, in circumstances of that nature, it could be a good ground of appeal but not for review otherwise court would be sitting in appeal on its own judgement which is not permissible in law…”***

The grounds for review as set down in this application are seeking Court to reverse its decision on the basis that, it incorrectly applied the law and particularly Section 94 of the Employment Act and it improperly exercised its discretion to award damages which the applicant it considers to be excessive. With due respect to Counsel for the Applicant, these grounds object to the Courts decision and not to specific errors on apparent on the record or to the fact that new and important evidence that was hitherto was not within the Applicant’s knowledge has been discovered. They are set out as grounds for an appeal and do not meet the criteria for review, as already discussed.

We are cognisant of the fact that the Applicant has no option to Appeal, because according to the Labour Dispute (Arbitration and Settlement) Act 2006, for any Appeal arising out of a labour decision, the Industrial Court is the last court of Appeal. This however is no reason for the Applicant to attempt to over extend the scope of the law as has been done in the instant application.

The application does not meet the criteria for review and it is accordingly dismissed, with no orders as to costs.

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE …………..**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ……………**

**PANELISTS**

**1. MS. ROSE GIDONGO …………….**

**2.MR. RWOMUSHANA JACK ……………..**

**3. MR ANTHONY WANYAMA ……………..**

**DATE: 13TH MARCH 2020**