

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 156 OF 2004

TITUS KORIR KOMEN.....PLAINTIFF

VERSUS

LAKE BASIN DEVELOPMENT AUTHORITY.....DEFENDANT

RULING

In his notice of motion dated 10-9-2012 the plaintiff prayed for the following orders:

- a. **spent.**
- b. **the court be pleased to correct the computation of the figures/arithmetics in the ruling of 16th May 2012 in respect of House Allowance in which the court used Kshs. 5000/= instead of Kshs. 25,000/= for a period of 63 months, and the total amount payable be computed accordingly.**
- c. **the court be pleased to amend the final amount payable to reflect the correction.**

The application is supported by the affidavit of the applicant sworn on 10-9-2012. The basic argument by the applicant is simply that this court in arriving at its ruling ought to have applied a figure of Kshs. 25,000/= instead of Kshs. 5000/= which resulted in him being paid Kshs. 315,000/= instead of Kshs. 1,575,000/=. He attached annexure TKK1 a circular from the defendant/respondent which according to the applicant placed him at job group B and therefore entitled to house allowance of Kshs. 25,000/=.

The respondent on the other hand opposed the application by filing grounds of opposition dated 21-12-2012 where it argued that the application is an abuse of the court process and that the error was not a mathematical one but so fundamental that it ought to be a ground of appeal.

The applicant did file written submissions as ordered by the court. The defendant/respondent did not. I have perused the application together with the attached annexure. I have equally perused the applicant's written submissions.

The question that ought to be answered is whether the applicant was entitled to house allowance as at the time he was retrenched and if so how much was it. From this court's impugned ruling, the house allowance pursuant to the applicant's produced payslip was Kshs. 5000/=. According to annexure D Exh 2 (Retrenchment Posts and Financial Implication) the applicant was in job group B earning house allowance of Kshs. 5000/=. Annexure TKK1 in the application herein was not produced as a piece of evidence. Neither is its authenticity explained. It does not bear any date or signature from the relevant office or authority. It is difficult therefore for this court to rely on the same as it would, in my humble opinion, be opening a new line of evidence altogether.

Indeed if the applicant intended to rely on the same, then there was nothing difficult for it to have been produced during the substantive hearing.

Without therefore belabouring the issue, I do not think that it would be proper to change the house allowance from Kshs. 5000/= to Kshs. 25,000/= as proposed by the applicant. That would fundamentally alter the landscape and it would mean reopening the matter afresh. I do agree that pursuant to section 99 and 100 of the Civil Procedure Act this court has the jurisdiction to alter any authentic error, but as found above the same is not arithmetic.

I shall therefore disallow the application with no order as to costs.

Dated, signed and delivered at Kisumu this 20th day of April, 2015.

H.K. CHEMITEI

JUDGE