

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT MOMBASA**

**CAUSE NUMBER: ELRC-C 872/2017**

**NAOMI SIOKAU MANINGI & 2 OTHERS.....CLAIMANTS**

**VS**

**KWALE INTERNATIONAL SUGAR CO LTD.....RESPONDENT**

**RULING**

1. Before me are two applications. The first application was dated August 2, 2024, by the Claimants, and the other is dated September 20, 2024, by the Respondent.

2. In their application, the Claimants seek;

- a. THAT this application be certified urgent and the same be heard and determined in the first instance.
- b. THAT this Honourable court be pleased to issue orders for fresh typing of the handwritten proceedings for the suit.
- c. THAT the Honourable Court be pleased to review the Judgment issued on 25th July 2024.
- d. THAT costs be in the cause.

3. The application is grounded on the prime grounds that:

- a. The Claimants herein filed a suit against the Respondent seeking orders that their termination was unfair and for the payment of terminal and contractual dues.
- b. The hearing of this matter began before Justice Ndolo, who heard the evidence of the 1st and 3rd Claimants. However, she was transferred before the case was concluded; as a result, the file was sent for the typing of proceedings to enable the incoming judge to continue with the part-heard case.
- c. Lady Justice

A.M.K. Nzei concluded the hearing of the suit, and subsequently, Judgment was delivered on 25th July 2024 for the 3rd Claimant, against the Respondent.

d. The Judgment was issued based on typed proceedings that apparently contained errors, as it referred to issues unrelated to the suit, including the statement that the 1st Claimant was deceased and a reference to an individual who was neither a party to the suit nor a witness.

e. Upon review of the Court file, it was observed that there was a discrepancy between the handwritten and typed proceedings, with the typed records referencing events that neither occurred in the case nor were part of the handwritten proceedings.

f. It is on the erroneously typed proceedings that the 1st Claimant's suit was declared to have abated upon her alleged death. The actual position is that the 1st Claimant actively participated in the case by giving viva voce evidence during the hearing and remains alive.

g. The errors present in the typed proceedings significantly prejudice the 1st Claimant, as her suit has been declared to have abated, thereby harming her right to a fair hearing and the proper determination of her case on its merits.

h. In the circumstances, an order for review is warranted, as there is a sufficient cause shown in addition to the need to rectify the apparent error in the typed proceedings.

4. The Respondent opposed the application vide the grounds of opposition dated 16th December 2024.

5. Similarly, the Respondent's application is a review application. It is argued that there is an error apparent on the record. Specifically, in calculating the underpayment compensation and other terminal dues for the third Claimant, the Court used the Regulation of Wages [General][Amendment] instead of the applicable Regulation of Wages [Agricultural Industry] Amendment Order. The Claimant opposes the application. The applications are those I could normally determine under the law, as Lady Justice Nzei is no longer at this station. However, given that the Claimant's application is heavily contested and considering the way in which the Respondent's response submissions are framed, prudence, propriety, and the wider interest of justice require that both applications be considered and

decided by Lady Justice A.M.K. Nzei. This file is hereby transferred to her for that purpose.

6. This file shall be placed before Her Ladyship the Judge on 29th September, 2025, for further directions.

**Read, Signed and Delivered on 18th September, 2025.**

**SIGNED BY:  
HON. MR. JUSTICE OCHARO KEBIRA**