



**Sirigoi v Pinpoint Hygiene Services Limited (Employment and Labour Relations Cause 2114 of 2016) [2024] KEELRC 1194 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1194 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2114 OF 2016**

**MN NDUMA, J**

**MAY 9, 2024**

**BETWEEN**

**CAROLINE KHAMASI SIRIGOI ..... CLAIMANT**

**AND**

**PINPOINT HYGIENE SERVICES LIMITED ..... RESPONDENT**

**RULING**

1. The application dated 2/10/2023 by the respondent/applicant seeks for review of the judgment of the court delivered on 15/6/2023 so as to substitute the judgment sum of Kshs. 253,878/= to Kshs. 66,120/= being the total underpayment due and owed to the claimant/respondent by the respondent/applicant and costs of the application.
2. The application is premised on grounds (a) to (m) set out on the face of the Notice of Motion and buttressed in the supporting affidavit of the applicant sworn to by Linda Wanjiru Mukami on 2/10/2023.
3. The grounds may be summarized that the judgment has an apparent error on the face of it in that at paragraph 18(d) of the judgment, the court calculated the claimant's dues for the period between 21/2/2012 to 30/4/2015 using a daily wage rate of Kshs.470.60 for 433 days instead of a monthly wage of Kshs.9,780.95 for 15 months pursuant to Legal Notice No. 197, the Labour Institutions Act (No. 12 of 2007) which can be cited as the Regulation of Wages (General ) Amendment Order 2013.
4. That further at paragraph 18(c) the court calculated the claimant's dues for the period between 1/5/2015 and 21/1/2016 using a daily rate of Kshs.527.10 for 273 days instead of a monthly wage of Kshs.10,954.70 for 9 months pursuant to Legal Notice No. 117, The Labour Institutions Act (No. 12 of 2007) which can be cited as Regulation of Wages (General) Amendment Order 2015.



5. Accordingly, the claimant/respondent ought to have been paid Kshs.146,714.25 for the period 21/2/2012 to 30/4/2015 and Kshs.98,586/= for the period 1/5/2015 to 21/1/2016 bringing a total of dues to Kshs.245,300.25 for the whole period she was the employee of the applicant.
6. That there is no inordinate delay in bringing the application. That in the meantime stay of execution of the judgment be granted.
7. The claimant respondent filed a replying affidavit in which she deposes that judgment was delivered on 15/6/2023. The court granted 30 days stay of execution of the judgment upon delivery. That she requested for a copy of judgment pending taxation of bill of costs.
8. That there is no error on the face of the judgment in that the claimant/respondent disclosed in the statement of claim dated 11/10/2016 in the schedule of claims the actual amounts claimed. That the claimant/respondent also stated the amounts claimed in her evidence before court.
9. That the court did not contradict the amounts pleaded for and supported by the evidence adduced by the claimant/respondent.
10. That the applicant has no leg to stand on having failed to exercise due diligence in the matter since there is no discovery of a new and important matter or evidence which was not within the knowledge of the applicant/respondent or its officials upon exercise of due diligence at the time of the hearing and before judgment was delivered.
11. That the application is an appeal disguised as an application for review. The same lack merit and it be dismissed with costs.

#### **Determination**

12. The parties filed written submissions which the court has carefully considered together with the depositions by the parties.
13. This matter is governed by Rule 33(1)(a) of the *Employment and Labour Relations (Procedure) Rules 2016*, which provides:-
  - 33.(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling— (a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; (b) on account of some mistake or error apparent on the face of the record; (c) if the judgment or ruling requires clarification; or (d) for any other sufficient reason.”
14. The judgment of the court at paragraph 8(d) and (e) in which the court granted under payments in the sum of Kshs.93,819.80 for the period 21/2/2014 to 30/4/2015 and Kshs.74,668/= for the period 1/5/2015 to 21/1/2016 are not visited by any error on the face of the record as alleged by the applicant or at all. The total sum of Kshs.168,487.80 awarded thereof is derived from prayers 4, 5 and 6 in the statement of claim dated 11/10/2016.
15. The respondent/applicant was at all material times during these proceedings aware of these prayers made by the claimant/respondent. The claimant/respondent reiterated these prayers in her evidence before court.
16. The court found those claims to have been proved and awarded the prayers set out in the statement of claim accordingly.



17. This application is an appeal against the judgment of the court disguised as an application for review. The respondent/applicant wants to have a second bite on the cherry before the trial court.
18. The application is misconceived and an abuse of the process of the court. The matters sought to be reviewed are *res judicata* before this court and the only option the respondent/applicant had was to appeal against the judgment of the court if it was dissatisfied with the same.
19. In the case of *National Bank of Kenya Limited versus Ndungu Njau* [1997] eKLR, the Court of Appeal stated thus: -

" A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established."
20. This is not the case in this matter. The application is dismissed with costs.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Ms. Mwae for Respondent/Applicant

Mr. Aswani for Claimant/Respondent

Mr. Kemboi, Court Assistant

