



Kariuki & another v Multi Packaging Ltd t/a Print Pak (Employment and Labour Relations Cause 1030 of 2018) [2024] KEELRC 1740 (KLR) (5 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1740 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1030 OF 2018**

NJ ABUODHA, J

JULY 5, 2024

BETWEEN

JUDY RINDI KARIUKI 1ST APPLICANT

JACINTA WANGUI NJOGO 2ND APPLICANT

AND

MULTI PACKAGING LTD T/A PRINT PAK RESPONDENT

RULING

1. The Applicants filed application dated 8th January, 2024 under sections 12 and section 16 of the *Employment and Labour Relations Court Act, 2011* and Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules 2016* seeking for orders of the court to review and set aside the judgment of November 3, 2023 to rectify the arithmetical error and omission glaring on the face of the judgment as follows:-
 - a. The tabulation of underpayment plus house allowance at paragraph 48 is meant to be Kshs 153,221.98 and not 117,316.78 as indicated at paragraph 52(ii)
 - b. Despite the award at paragraph 49 of the Judgment, the same is not captured at paragraph 52 of the Judgment. $(15/26 \times 11818) \times 9 \text{ years} = 61,362.69$ for each Claimant.
2. That the total sum for each Claimant be Kshs 320,946.67/= instead of Kshs 223,678.78/=
3. The application was supported by the Affidavit of Judy Rindi Kariuki the 1st Claimant herein on her behalf and that of the 2nd Claimant who averred that there is no appeal flowing from the judgment. That there was arithmetical error and omission of part of the award made that was apparent in the final rendition of the Judgment.



4. The Applicant averred that the court found the Claimants were entitled to underpayments at paragraph 48 of the Judgment whose total was Kshs 153,221.98 and not 117,316.78 as indicated at paragraph 52(ii) of the same judgment.
5. The Applicant further averred that in the same judgment the court found that the Claimants were entitled to service pay for 9 years at the rate of 15 days for each year worked as seen above at the tune of $(15/26 \times 11,818) \times 9 \text{ years} = \text{Kshs } 61,362.69$ for each Claimant. However, the same service pay was not captured at the final judgment at paragraph 52.
6. The Applicant averred that upon rectification the total award for each Claimant would be Kshs. 320,946.67 instead of 223,678.78.
7. The Applicant averred that their advocates did a letter to the Respondent seeking a resolution of the inadvertent omission dated November 22, 2023. That there has been no response to the letter hence the need for this application for the court to rectify the said judgment.
8. The Applicant averred that the Respondent will not be prejudiced in any way in the event the application for review is granted hence the same should be allowed as prayed.
9. The Respondent did not file any response to this application which was dispensed of by written submissions.

Determination

10. I have considered the Application filed by the Applicants herein and I proceed to analyse it as follows.
11. Section 16 of the *Labour Relations Act*, 2011 is the guiding law on review of the Employment and Labour Relations court Judgments. It provides as follows;

The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.
12. Further Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* provides for review as follows:-
 - (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.
13. When it comes to the grounds of review the Applicants rely on mistake or error on face of record. The Applicants raise issues of the court issuing a judgment with arithmetical error and omission.



14. In *Zablon Mokuu v Solomon M. Choti & 3 others* [2016] eKLR while relying on court of Appeal decisions held that: - The Court of Appeal had the following to say in an application for review in the case of *National Bank of Kenya Ltd vs Ndungu Njau*.

“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. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

16. From the above proposition it is clear from the perusal of the said judgment that the Judge stated that he had granted certain prayers among them being on underpayments and service pay for 9 years. However, the service pay was not captured at the last paragraph of the judgment and an arithmetic error occurred in calculating the total sum for underpayments for each Claimant.

17. There was clearly an omission on the part of the court and this omission is one of the grounds for a review of a judgement or decree under the rules herein.

18. Even though the Applicants raised the issue of arithmetic additions I also note that the prayer for underpayments for May 2013-April 2015 had a wrong calculation in that 3,673.09 x 24 months is Kshs 88,154.22/= and not the stated Kshs 35,905.2.

19. This makes the total underpayments to increase to Kshs 205,470.94 for each Claimant plus the service pay omitted and the other damages which totals to Kshs 373,195.63/= for each Claimant.

20. I accordingly allow the application for review with the result that the judgement delivered on November 3, 2023 is altered to read that the Claimants are entitled to the following: -

- a. One month’s salary in lieu of notice... Kshs 11,818/=
 - b. Underpayments..... Kshs 205,470.94/=
 - c. Service pay for 9 years of..... Kshs 61,362.69/=
 - d. 8 Months’ Salary as compensation for unfair termination
Kshs 94,544/=
- Total..... Kshs 373,195.63/= for each Claimant.

21. Any subsequent decree arising therefrom shall accordingly reflect that alteration.

22. It is so ordered.

DATED AND DELIVERED THIS 5TH DAY OF JULY, 2024

ABUODHA NELSON JORUM

JUDGE

