



**Goodlife Pharmacy Limited v Odhiambo (Appeal E069 of 2024)  
[2025] KEELRC 2643 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2643 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E069 OF 2024  
NZIOKI WA MAKAU, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**GOODLIFE PHARMACY LIMITED ..... APPELLANT**

**AND**

**SOSPETER OUKO ODHIAMBO ..... RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. E. A. Obina (PM)  
in KISUMU CMELRC NO. E071 OF 2022 delivered on 20th June 2024)*

**RULING**

1. Before this Court is the Appellant's application dated 26<sup>th</sup> May 2025 seeking to set aside, review, or vary this Court's judgment delivered on 14<sup>th</sup> May 2025. The Appellant contends that the Court erroneously determined the appeal by relying on a judgment dated 4<sup>th</sup> August 2022 which had been set aside on 9<sup>th</sup> March 2023, instead of the final judgment delivered on 13<sup>th</sup> June 2024.
2. It is the Appellant's assertion that this misdirection resulted in the Court upholding awards anchored on a judgment that had no legal effect. According to the Appellant, reliance on the wrong judgment exposed it to additional financial liability not adjudicated upon either at the trial court or on appeal, thereby causing a miscarriage of justice.
3. On this basis, the Appellant urges that there is an error apparent on the face of the record warranting a review under Order 45 of the Civil Procedure Rules.
4. The Respondent opposed the application through a replying affidavit sworn on 16<sup>th</sup> June 2025. He admitted that reference was made to the set-aside judgment but maintained that this Court in fact rendered its decision on the basis of the final judgment dated 13<sup>th</sup> June 2024. The Respondent contended that appellate courts do not rely on lower courts' judgments in making a determination but are guided by the principles in *Selle & another v Associated Motor Boat Co. Ltd & others* [1968]



EA 123, which require reconsideration and re-evaluation of evidence in drawing conclusions. In his view, the judgment of the trial court was not evidence capable of re-evaluation, and therefore the reference did not prejudice the outcome. It was further the Respondent's case that the Appellant was surreptitiously attempting to have the court alter its award of Kshs. 720,000/- to Kshs. 360,000/-, a matter which lies only in an appeal and not review. In view of the foregoing the Respondent maintained that the Appellant's contention that this court relied on the interlocutory judgment not the final judgment was misplaced. Additionally, it was his averment that the reference to the vacated judgment did not affect the substance of this Court's decision and urged dismissal of the application with costs.

5. Directions were given on 3<sup>rd</sup> June 2025 that the application be disposed of by way of written submissions. Both parties complied.

#### Appellant's Submissions

6. The Appellant submitted that this court's failure to evaluate and pronounce itself on the final judgment amounted to an error apparent on the face of the record warranting review under Order 45 of the Civil Procedure rules. It maintained that it was only the final judgment of 13<sup>th</sup> June 2024 that fully addressed the issues in dispute, including the fairness of the 12-month salary award, therefore it would amount to miscarriage of justice if it wasn't considered. Moreover, the Appellant asserted that execution was being pursued on a sum that had neither been considered nor affirmed. It highlighted the fact that the court upheld the award of Kshs. 360,000/- captured in the interlocutory judgment. Additionally, it drew attention to paragraph 23 of the judgment where it was stated:

“I would therefore uphold the finding of the learned magistrate in regard to the award of damages and payment of wages for work done.”

7. In view of the foregoing the Appellant asserted that the court's action was inimical to the legitimate expectation that courts would do substantive justice as was enunciated in *Wachira Karani v Bildad Wachira* [2016] eKLR. To support its case the Appellant cited *Otieno Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, which outlined the main grounds for review as; discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or any other sufficient reason, provided the application is made timeously.
8. It also cited the cases of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR, and *Anthony Gachara Ayub v Francis Mahinda Thinwa* [2014] eKLR which in citing *Muyodi v Industrial and Commercial Development Corporation & another* [2006] 1 EA 243, underscored that review lay only where there was a patent error that is easily decipherable without elaborate argument. In conclusion, the Appellant urged the court to allow the application with costs.

#### Respondent's Submissions

9. The Respondent submitted that the Appellant had not met the legal threshold for review. He asserted that the power of review was discretionary and that the provisions of section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, as cited by the Appellant, were not applicable. According to the Respondent, the proper provision was Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024, which permits review not only on discovery of new evidence or error on the face of the record, but also for purposes of clarification.
10. The Respondent submitted that what the Appellant was essentially seeking was clarification under Rule 74(c), of the Employment and Labour Relations Court (Procedure) Rules, 2024 on the court's silence on the award of Kshs. 720,000/-. However, the Respondent submitted that the judgment was neither silent nor ambiguous, but expressly upheld the trial magistrate's judgment dated 13<sup>th</sup> June



2024. He asserted that once the default was vacated, it ceased to exist in law, leaving only the final judgment as the only subject of appeal. He relied on the Court of Appeal decision in Siaya County Assembly Service Board & 2 others v Olwero (Civil Appeal E077 of 2022) [2023] KECA 905 (KLR), where it was held that clarification is permissible only where a judgment or ruling is ambiguous, unclear, or confusing, and that clarification merely illuminates a hazy decision and must conform with the findings already made, without entitling the court to a fresh analysis, departure, or distortion of its earlier findings.

11. Flowing from the foregoing the Respondent submitted that the Appellant was inviting the court to revisit the merits of the appeal and re-evaluate the award of 12 months' salary for unlawful termination, which was outside the scope of a review application as it would amount to a distortion of the decision already made. In conclusion, the Respondent urged the Court to dismiss the application with costs, and to allow him to proceed with execution so as to enjoy the fruits of the judgment.

### **Disposition**

12. The Applicant who is the Appellant in the appeal is trying to be clever by a half. The decision of the Court which was delivered related to the decision of the trial court as per the memorandum of appeal. There was no appeal against the decision of 4<sup>th</sup> August 2022 and the only memorandum of appeal before the Court related to the decision rendered on 20<sup>th</sup> June 2024. There is no merit in having a long review of the submissions made by parties as the submissions made in respect of the appeal related to the decision dated 20<sup>th</sup> June 2024 with the citations of cases and arguments advanced solely in respect of the decision of Hon. Obina made in June 2024. The only errata was on the face of the judgment at page 1 which error is corrected under the slip rule in Rule 75 of the Employment and Labour Relations Court (Procedure) Rules 2024.
13. The motion is dismissed with costs to the Respondent. To be clear, the decision of the Court affirmed that the Respondent in the Appeal was entitled to all the reliefs granted by the trial court on 20<sup>th</sup> June 2024 save for the issue of the surcharge of Kshs. 97,464/- which was resolved in favour of the Appellant. Costs shall be on the higher scale as the Appellant has misguided itself in this sorry attempt at reversing a decision made with absolutely no basis for the move.

Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

