

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
APPEAL NUMBER E041 OF 2024**

BETWEEN

MIJENGO INVESTMENTS LIMITED..... APPELLANT

AND

CLAUDIO ODUOR RESPONDENT

RULING

1. Judgment in this Appeal was delivered on 19th November 2024.
2. The Appeal was declined, with costs to the Respondent.
3. The Respondent filed an application dated 9th June 2025, seeking release of decretal sum awarded by the Trial Court, amounting to Kshs. 460,257.
4. The amount was deposited in Court by the Appellant, as a condition for grant of an order of stay of execution of the decree, pending Appeal.
5. The Appellant filed an application dated 20th June 2025 asking the Court to review its Judgment, dismissing the Appeal, and find that the Respondent had been overpaid gratuity in the sum of Kshs. 103,200.
6. The Appellant urges the Court to deduct the sum of Kshs. 103,200 from the final amount payable to the Respondent.

7. The applications are founded on the respective affidavits of the Parties.
8. The Respondent underlines in his application that the Appeal having been disposed of, there is no reason why the decretal sum deposited in Court, should not be released to the Respondent.
9. On the application by the Appellant for review of Judgment, the Respondent submits that the issue was dealt with at paragraph 16 of the Judgment. A successful litigant must reap the fruits of his success. The Respondent submits further that the application by the Appellant is an afterthought, coming 6 months after Judgment was delivered.
10. The Appellant submits that it deposited decretal sum at Kshs. 373,382 and costs at Kshs. 86,875. The costs were untaxed, and must be taxed before the final amount due to the Respondent, can be determined. According to the Appellant at paragraph 12 of its submissions, the sum of Kshs. 86,875 is a rough estimate of costs.
11. The Appellant reiterates that the Trial Court found the Respondent was overpaid the sum of Kshs.103,200, but failed to factor this in its Judgment, and the Judgment on Appeal likewise, failed to factor the overpayment.
12. Parties agreed at the last mention on 31st July 2025, that the applications are considered and determined on the strength of their affidavits and submissions on record.

The Court Finds: -

13. Decretal amount deposited in Court as security by the Appellant, on 3rd June 2024, under Miscellaneous Application No. E09 of 2024, was deposited on the understanding that once the Appeal is finalized, it would be released to the successful Party.
14. It was not deposited on the understanding that there would be further applications at the Trial Court concerning the decretal sum, such an application for taxation of costs, as the Appellant now wishes to have.
15. It was not stated by the Parties in the application for stay of execution, that the sum of Kshs. 86,875, stated to be the costs in the Trial Court, was a rough estimate that would be taxed after the Appeal.
16. Parties were not in dispute on the decretal amount including costs, when they argued and concluded the application in which the orders for stay of execution of decree issued.
17. They drew and extracted decree, which was presented to the Court on Appeal, and which was the basis of the orders for stay of execution.
18. The Court dealt with the issue of exorbitant and disproportionate terminal benefits paid to the Respondent, at page 9 of the Judgment, finding that terminal dues awarded were not exorbitant and disproportionate, as submitted by the Appellant.

19. Notably, in its 13 Grounds of Appeal, the Appellant did not even mention gratuity or the sum of Kshs. 103,200 which was overpaid to the Respondent. It was just a general allegation that terminal dues paid were exorbitant and disproportionate.
20. There was no counterclaim for any overpayment made by the Appellant to the Respondent, at the Trial Court. The Trial Court declined award of a sum of Kshs. 11,431 in gratuity, finding that the Respondent had already been paid Kshs. 103,200, in excess of what he was claiming. There was no finding that the Respondent was overpaid gratuity which should now be repaid to the Appellant. There was no basis for the Court to interfere with the findings and decree of the Trial Court on Appeal.
21. Although Rules 74 and 75 of the E&LRC [Procedure] Rules, 2024 allow Parties to seek review of all forms of decrees and orders; and, although the Rules and the Act define a 'suit' somewhat incorrectly, to include an 'appeal'; the Court does not think it is appropriate for an Appellant to seek review of Judgment on substantive matters, falling within the Grounds of Appeal, which the Court has addressed in its Judgment, or which could have been specifically raised by a Party in the primary, or appellate, proceedings. Unless review is under Rule 75 on correction of clerical mistake, incidental error or omission, the Court must not encourage revisiting of the Judgment made on appeal. The correct procedure is for a dissatisfied Party in an Appeal, to lodge an Appeal at the Court of Appeal, pursuant to Section 17 of the E&LRC Act.

22. The application by the Appellant was filed soon after the Respondent filed his application seeking release of the deposit held by the Court. Review application under Rule 74 above, must be made within a reasonable time. The application was filed 6 months after the Judgment, which is not a reasonable time, and appears intended to delay the Respondent from accessing the fruits of his litigation.

23. The application by the Respondent is merited, while that by the Appellant has no foundation.

IT IS ORDERED: -

- a. The application by the Appellant dated 20th June 2025 is declined.***
- b. The application by the Respondent dated 9th June 2025 is allowed.***
- c. The decretal sum of Kshs. 460,257.80 shall be released to the Respondent forthwith.***
- d. Upon release, the file shall be marked as closed.***
- e. No order on the costs of the 2 applications.***

Dated, signed and delivered electronically at Nakuru, pursuant to Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 31st day of October 2025.

James Rika
Judge



