

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAKURU

ELRC APPEAL NO. E027 OF 2023
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

FONTANA LIMITED.....

APPELLANT

VERSUS

WYCLIFFE WAISAKWA OKUMU.....

RESPONDENT

RULING

Introduction

1. The Appellant/Applicant filed a Notice Motion dated 20th August 2025 under a Certificate of Urgency during the August vacation recess seeking the following orders that:

1. Spent

2. This Honourable Court be pleased to stay execution of this judgment pending hearing and determination of this application.

3. This Honourable Court be pleased to review and to rectify on the Judgment

delivered on 23rd May 2025 by Lady Justice Anna Ngibuini Mwaure on the basis of an error apparent on the face of the record.

4. The costs of this application be in the cause.

2. The application is brought under ***section 12(3) of the Employment and Labour Relations Act and Rules 45 and 74 of the Employment and Labour Relations Court (Procedure) Rules 2024.***

Appellant/Applicant's supporting affidavit

3. The application is supported by the affidavit of Seth Angatia, the Appellant/Applicant's Human Resource Manager, dated the same date as the application.
4. The deponent avers that the Appellant/Applicant is seeking review of the judgment delivered on 23rd May 2025 in its favour.
5. The deponent avers that although the court found there was no underpayment of salaries, the award for notice pay and compensation was erroneously calculated on a gross salary of Kshs.14,401/= instead of the correct figure of Kshs.10,700/=, where the basic

salary is Kshs.8,800 plus house allowance Kshs. 1,900/=.

6. The deponent emphasized that this constitutes an error apparent on the face of the record. The deponent notes that the Appellant/Applicant has already paid Kshs.105,126/= to the Respondent, as confirmed in *Fontana Limited V Okumu [2023] KEELRC 2240 (KLR)*, leaving a balance of Kshs.40,904/=.
7. The deponent provided a revised tabulation of dues, Kshs. 10,700/= for notice pay, Kshs.6,930 /=for September 2018 salary, and Kshs.128,400/= for 12 months' compensation totalling Kshs.146,030/=, less the amount already paid.
8. The deponent asserts that the Appellant/Applicant is willing to pay the balance as security and argues that granting the application will not prejudice the Respondent, but will serve the interests of justice.

Respondent's replying affidavit

9. The Respondent opposed the application vide a replying affidavit sworn by the Respondent dated 29th September 2025.

10. The Respondent contends that the application for review of the judgment delivered on 23rd May 2025 is untenable because it does not disclose any error apparent on the face of the record and presents no new and compelling evidence to justify such orders.
11. The Respondent avers that while the court dismissed the claim for underpayment of Kshs.226,451.05/= for lack of proof, it did not determine his salary to be Kshs.10,700/= as alleged, but rather Kshs.14,401/=.
12. The Respondent argued that the grounds advanced amount to issues fit for appeal rather than review, and further points out that the application was filed belatedly on 18th September 2025, nearly four months after judgment.
13. Consequently, the Respondent urged this Honourable court to dismiss the application, which he views as a calculated attempt to deny him the benefit of his rightful award.
14. Parties canvassed by way of written submissions.

Appellant/Applicant's submissions

15. The Appellant/Applicant relied on **Rule 74(1) of the ELRC Procedure Rules** and **section 16 of the**

Employment and Labour Relations Court Act,

arguing that there are errors apparent on the face of the record. Specifically, the Appellant/Applicant contends that the court failed to credit Kshs.105,126/= already paid pursuant to Lady Justice Wasilwa's ruling of 28th September 2023, and erroneously adopted a salary figure of Kshs.14,401/= instead of Kshs. 10,700/= as evidenced in payslips, leading to an inflated award despite the court's finding of no underpayments.

16. The Appellant/Applicant submitted that these are factual oversights that are self-evident and correctable through review, not appeal, and that prompt action was taken upon discovery of the errors.
17. The Appellant/Applicant relied on the cases of ***National Bank of Kenya Ltd V Njau [1997] KECA 71 (KLR)*** and ***Francis Origo & another V Jacob Kumali Mungala [2005] KECA 314 (KLR)*** where the Court of Appeal held in both cases that a review may be granted where the court seeks to correct an apparent error or omission, provided that such an error is self-evident on the face of the record and does not require

elaborate reasoning or detailed argument to establish.

18. In the cases of ***Pancras T. Swai V Kenya Breweries Limited [2014] KECA 883 (KLR)***, ***John Kamau Githinji V Teachers Service Commission [2023] KEELRC 1543 (KLR)***, ***Kenya Tea Growers Association V Attorney General & Others [2021] eKLR***, ***Maingi V Milicons Limited [2023] KEELRC 3138 (KLR)***, and ***Kamau V Del Monte Kenya Limited [2025] KEELRC 884 (KLR)***, all of which affirm that review jurisdiction is limited to correcting errors on the face of record which are self-evident errors to prevent miscarriage of justice.
19. The Appellant/Applicant urged this Honourable Court to allow the application as prayed.

Respondent's submissions

20. The Respondent submitted that the grounds raised amount to issues for appeal rather than review, since the alleged salary discrepancy between Kshs.10,700/= and Kshs.14,401/= is not a self-evident error but one requiring substantive reasoning.

21. The Respondent submitted that the court only dismissed the underpayment claim of Kshs.226,451.05/= for lack of proof without pronouncing on the actual salary, and therefore the Appellant/Applicant's contention cannot qualify as an error apparent on the face of the record. The Respondent relied on the cases of ***National Bank of Kenya Ltd V Ndungu Njau(supra)***, where the Court of Appeal held that review is limited to self-evident errors on the face of the record. In ***Nyamogo & Nyamogo Advocates V Kogo [2001] EA 173***, where the court stated that distinguishing mere erroneous decisions from errors apparent on the record, and in ***Republic V Advocates Disciplinary Tribunal Ex-Parte Apollo Mboya [2019] eKLR***, the court held that errors requiring elaborate argument cannot be a ground for review.

22. The Respondent further submitted that the application was filed after an unreasonable delay of over three months without explanation. In ***Utalii Transport Co. Ltd & 3 Others V NIC Bank Ltd & Another [2014] eKLR***, the court held as follows:

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case, the subject matter of the case, the nature of the case, the explanation give for delay should not be difficult to ascertain once it occurs; the litmus tests being that it should be an amount of delay which leads to the court to an inexcusable. On applying court’s mind on the delay, caution is advised for courts not to take the word “inordinate” in its dictionary meaning, but in the sense of excessive as compared to normality.”

23. The Respondent therefore urged the dismissal of the application with costs.

Analysis and determination

24. The court has considered the application, supporting affidavit, replying affidavit, together with the rival submissions by both counsels; the issue for determination is whether the application is merited and if this court can entertain review of its judgment.

25. **Section 16 of the Employment and Labour**

Relations Court provides as follows:

“The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.”

26. **Rule 74(1) of the Employment and Labour**

Relations Court (Procedure) Rules 2024 provides as follows: -

“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 a new and important matter or evidence which, despite 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.”***

27. In this instant case, the Appellant/Applicant argued that there was an error apparent on the face of the record when it came to the salary, where is supposed to be Kshs.10,700/= as opposed to Kshs.14,401/=. Looking at the payslips presented before this Honourable Court, the Respondent's gross salary varies from Kshs.13,251/= in December 2017 for example to Kshs.16,461/= in September 2016. The letters of contract were for a few months and the ones provided to court read Kshs.8,000/= as wages and Kshs.1,900/= as house allowance which would be totalling Kshs.9,900/=. The court is of the view that there is no apparent error on the face of the record, as the court is not provided with clear payslips showing the claimed wages of Kshs.10,900/=. The court is obliged to follow the prayers in the pleadings and the support documents.

28. The Applicant did not produce evidence to support the claim of salary of Kshs.10,700/= neither in their pleadings, letters of appointments or even in the

payslips. The court cannot therefore be asked to review its judgment if there is no error on the face of its judgment.

The court finds no error on a substantial face of the judgment. The Applicant if dissatisfied with the judgment of the court he should file an appeal as a mere error or wrong view is certainly not a ground for review but could be ground for appeal as stated in the case of **NYAMOGO and NYAMOGO ADVOCATES -VS- KOGO (2001) E.A. 173.**

29. The court is not a party to the allegation that the Applicant had already paid Kshs.105,126/= to the Respondent. This was not part of this court's judgment and the court is not in a position to give an opinion on the same.
30. All in all, the court finds there is no error in the court's judgment that would justify for the review of the same. The Applicant's application is therefore not proved. It is unmerited and is dismissed accordingly.
31. Each party will meet their respective costs.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 23rd Day of
January 2026.**

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to

enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL