

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

CAUSE NO. E467 OF 2023

SAMSON TABU OGWEL.....

.....CLAIMANT

VERSUS

TOURISM REGULATORY AUTHORITY.....

.....RESPONDENT

RULING

1. Before Court is the Respondent/Applicant's Notice of Motion application dated 19th November, 2025, brought pursuant to Section 16 of the Employment and Labour Relations Court Act, and Rules 47 & 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024, where the Applicant seeks orders **THAT**:-
 - i. Spent
 - ii. The Honourable Court be pleased to set aside and/or vary its orders issued on 16th October, 2025, and specifically order (c), granting the Claimant/Respondent three months' salary in lieu of notice.
 - iii. This Honourable Court be pleased to substitute the order for payment of three months' salary in lieu of

notice with an order for payment of one month's salary in lieu of notice.

- iv. The costs of this application will be in the cause.
2. The crux of the motion is that on 16th October 2025, this court delivered judgment in favour of the Claimant/Respondent, and awarded him three months' salary in lieu of notice. The Respondent/Applicant argues that the Claimant was only entitled to one month's notice under the HR Policy Manual (Clause 13.5.2) for his job grade (TRA 4).
3. The Applicant avers that paying three months' salary would amount to unjustly enriching the Claimant/Respondent. The Applicant states that Sections 49(1)(a) and 50 of the Employment Act, 2007, tie payment in lieu of notice to the entitled notice period, and contends that the award violates these legal provisions.
4. The Applicant states that the court considers its application to avoid irreparable injustice, and avers that the Claimant will not be prejudiced since the request is based on the employment contract.
5. The Applicant prays that the court allow their application.
6. The Claimant/Respondent opposed the Motion vide a Replying affidavit sworn by Samson Tabu Ogwel on 5th

December, 2025. He confirms that on 16th October 2025, judgment was delivered, which was comprehensive and based on both parties' evidence and submissions, and the court found his dismissal to be wrongful, unlawful, and procedurally unfair, and awarded remedies including three months' salary in lieu of notice.

7. It is the Claimant/Respondent's assertion that the Applicant's HR Policy Manual, on one month's notice, applies only to lawful termination, not wrongful dismissal, and that the three month award is a discretionary remedy for unfair dismissal.
8. He maintains that Sections 49 and 50 of the Employment Act have been misinterpreted as the court has wide discretion under Section 49(4) to award appropriate remedies, including more than the contractual notice period.
9. The Claimant denies that the award amounts to unjustly enriching him, and avers that the award is compensatory for unfair dismissal, not a windfall.
10. It is the Claimant's position that the application does not meet the legal threshold for review under the Employment and Labour Relations Court (Procedure) Rules, 2024, which only allows review based on new evidence, an apparent error, or sufficient reason.

11. He avers further that the application fails this threshold because no new evidence has been presented other than a re-argument of issues already determined, that there is no clear error on the face of the record, and that the court exercised its discretion properly and the Applicant's mere dissatisfaction with the judgment does not qualify as "sufficient reason" for review.
12. The Claimant further argues that the application is an attempt to appeal the judgment through a review process, which is improper and an abuse of court process, and offends the principle of res judicata.
13. The Claimant further states that the nearly two month delay in filing the application further shows that it is not about correcting an obvious error, but about dissatisfaction with the outcome.
14. The Claimant/Respondent prays that the Applicant's motion be dismissed with costs.

Determination

15. I have considered the application, the grounds and affidavit in support, the Replying affidavit in opposition, and the oral submissions by both parties. The singular issue for determination is whether the Applicant/Respondent has satisfied the legal threshold for review of judgment under Section 16 of the Employment and Labour Relations Court Act, and Rule 74 of the

Employment and Labour Relations Court (Procedure) Rules, 2024.

16. The principles governing review of judgment/ruling were well articulated in ***National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR***, where the Court held:-

“A review may be granted whenever the court considers it necessary to correct an apparent error or omission... It is not a ground for review that another judge could have taken a different view of the matter.”

17. Similarly, in ***Francis Origo & another v Jacob Kumali Mungala (2005) eKLR***, the Court emphasized that a review is not an appeal in disguise and cannot be used to re-open or re-argue a case.

18. By dint of the foregoing, it is evident that the established grounds for review are discovery of new and important evidence, a mistake or error apparent on the face of the record, or for any other sufficient reason, and which reason must be sufficiently satisfied.

19. Clause 13.5.2 of the Respondent/Applicant’s Human Resource Policy and Procedure Manual states:-

“An employee whose services have been terminated is entitled to the following:

(a) One month’s notice or one month’s salary in lieu of notice for officers in TRA 4,

and below, and two months' notice or two months' salary in lieu of notice for officers in TRA 3 and above."

20. The Applicant's contention is that in the Judgment delivered on 16th October 2025, this court awarded the Claimant three months' salary in lieu of notice while he was only entitled to one month's notice under the HR Policy Manual (Clause 13.5.2) for his job grade (TRA 4).
21. The court in the Judgment awarded the Claimant 3 months' salary in lieu of termination notice per his statement of Claim, and which I note as correctly submitted by the Applicant, is not supported by the Human Resource Policy and Procedure Manual.
22. Further, contrary to the Claimant's submission that the award was compensatory, it is not. The award can only be granted in accordance with either the terms of the employee's contract of service or the HR Policy, and where neither expressly provides for a notice period, the court will be bound by the notice period prescribed under Section 35 of the Employment Act, 2007.
23. The award was therefore evidently made in error, and the error does not require further argument.
24. The Respondent/Applicant has therefore demonstrated that the Court overlooked a material fact on the record,

and reached an erroneous conclusion justifying review of the orders granted.

25. In the circumstances, I find the Motion merited and grant the following reliefs: -

a) An order is hereby issued substituting the order for payment of three months' salary in lieu of notice with an order for payment of one month's salary in lieu of notice.

b) I make no orders on costs.

26. It is so ordered.

**SIGNED, DELIVERED, AND DATED AT NAIROBI THIS 19TH
DAY OF MARCH, 2026**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Githongori present for the Claimant/Respondent

Ms. Waliaula h/b for Ms. Odongo for the Respondent/Applicant

Ms. Esther S - Court Assistant