



**Jin v Kwale International Sugar Company Limited (Cause
E010 of 2023) [2025] KEELRC 68 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 68 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E010 OF 2023
M MBARŪ, J
JANUARY 23, 2025**

BETWEEN

AHMED ABDULKADER JIN CLAIMANT

AND

KWALE INTERNATIONAL SUGAR COMPANY LIMITED RESPONDENT

RULING

1. The claimant filed an application dated 2 October 2024 seeking that the judgment herein delivered on 4 July 2024 be reviewed and allow prayer (b) thereof for;

Payment of withheld and unpaid salary for the month of November 2022 and for December 2022 up to and including 5 December 2022 based on his monthly gross salary of Ksh.177,852 and a net of USD 850 amounting to a sum of Ksh.330,507.
2. The applicant is supported by the claimant on the basis that there was no complaint about his prayer (b) of the Memorandum of Claim that his salary for November 2022 was due at Ksh.177, 852 plus \$850 and his December 2022 salary of Ksh.29, 640 plus \$140, totalling Ksh.207, 492 and \$990.
3. The respondent did not say that part of the salary paid was in United States Dollars. Under Section 20 of the *Employment Act*, the respondent had to provide an itemized payment statement.
4. Post-judgment, the claimant noted these errors and the need to have the judgment herein reviewed to have his full and final payments made by the respondent.
5. In reply, the respondent filed Grounds of Opposition, stating that the court is functus officio and the application is res judicata. The review application is without merit, and the claimant is seeking the court to rehear the matter, which should be dismissed with costs.

Both parties attended and agreed to file written submissions.



6. The claimant submitted that the respondent deliberately failed to fully disclose in court that part of the salary paid was in United States Dollars. His final dues were owed at prayer (b) of the Memorandum of Claim that his salary for November 2022 was due at Ksh.177 852 plus \$850 and December 2022 salary Ksh.29 640 plus \$140, total being Ksh.207 492 and \$990. Upon the judgment, he noted that the court did not allow prayer (b) as pleaded; without the payment statement in terms of Sections 20 and 74 of the Employment Act, the court was denied crucial records by the respondent which would have demonstrated the payments made in salaries.
7. In the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, the court allowed a review of the judgment following the discovery of error and omission of facts.
8. The respondent submitted that the law governing the judgment review is section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*, which the claimant failed to address. The conditions required for review have not been met as held in *Solacher v Romantic Hotels Limited & another* Civil Appeal 167 of 2019.
9. The claimant claims that his salary from November and December 2022 was not paid based on Ksh.177, 852, and \$850. The documents filed were not part of his claim, and he cannot purport to re-litigate the matter post-judgment as held in *Abdulahi Mohamud v Mohammud Kabiye* Civil Case 209 of 2010.

Determination

10. A review of the judgment delivered by this court is allowed under the provisions of Rule 74 of the *Employment and Labour Relations Court (Procedure) Rules, 2024*. There must be an error or mistake apparent on the face of the record, discovery of new matter, need for clarification or sufficient cause.
11. In this case, the claimant asserts that there is a need for review because the court did not award his claim under paragraph (b) of his prayers.
Prayer be was that;
 - b) payment of withheld and unpaid salary for November 2022 and for December 2022 up to and including 5th December 2022 based on his monthly gross salary of Ksh.177,852 and a net of USD 850 amounting to a sum of Ksh.330,507.
12. In the judgment delivered on 4 July 2024, the court awarded compensation, notice pay and costs.
13. The basis for the compensation and notice pay was an unfair termination of employment without due process.
14. On the claim for payments for withheld salaries for November and December 2022, the court, on page 7/8 of the judgment, held that;

On the claim for payment of withheld salaries for November and December 2022, Ksh.177 852 and \$850, for a total of Ksh.330 507, upon clearance, the claimant was paid Ksh.23 713.73 for accrued leave days on 29 May 2023. The assertion that there were pending dues is not justified.
15. Prayer (b) of the Memorandum of Claim, as pleaded, was addressed with a finding. The court has addressed the matter with a conclusion. This is not a matter for review that can be urged based on the bank statements filed by the claimant at this stage.



16. The claim that there were salary payments in United States Dollars was addressed with a conclusion. Equally, urging a case in which the respondent failed to disclose to the court on this basis entirely is not justified.

This is not a proper case for review.

17. Application dated 2 October 2024 is without merit and is hereby dismissed. No orders on costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 23 DAY OF JANUARY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

