



**Khamala v Design N-Scope Architects & Interior Designers Limited & 2 others
(Cause 159 of 2020) [2025] KEELRC 491 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 491 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 159 OF 2020
S RADIDO, J
FEBRUARY 20, 2025**

BETWEEN

CHRISTABEL AMIRU KHAMALA CLAIMANT

AND

**DESIGN N-SCOPE ARCHITECTS & INTERIOR DESIGNERS
LIMITED 1ST RESPONDENT
ANTONY MACHARIA 2ND RESPONDENT
NELIUS MWAURA 3RD RESPONDENT**

RULING

1. Before the Court is a Motion Amended on 22 April 2024 by Christabel Amiru Khamala (the Claimant) seeking orders:
 - i. That the Honourable Court be pleased to review the judgment delivered on the 15th February 2024 so as to award the unpaid salaries between June 2018 and January 2019 amounting to Kshs 100,666.67, and One-month salary towards payment in lieu of notice of termination for Kshs 140,000.
 - ii. That the costs of this application be provided for.
2. The grounds supporting the Motion were that the Court did not consider the heads of claims for salary in lieu of notice and withheld salaries from June 2018 to January 2019, which had been pleaded and which had not been disputed.
3. Despite acknowledging service of the Motion on 4 July 2024, the Respondent did not respond to the Motion or attend Court on 19 November 2024 when the Court gave directions.



4. The Claimant filed her submissions on 12 February 2025 (should have been filed on or before 30 November 2024).
5. The Court has considered the record, Motion, affidavit in support and submissions.
6. The Claimant did not disclose on the face of the Motion whether her application was grounded on an error apparent on the face of the record or other sufficient ground.
7. It is in the submissions that the Claimant mentioned the ground of error apparent on the face of the record.
8. Some of the issues which were identified by the Claimant in her submissions in support of the Cause and acknowledged by the Court in the judgment at paragraph 6 thereof were:
 - (iv) Whether the Claimant is entitled to payment in lieu of notice of termination.
 - (v) Whether the Claimant is entitled to her unpaid salary.
9. The Court did not answer the questions.
10. The law books are replete with what constitute an error apparent on the face of the record and the review jurisdiction.
11. The Court of Appeal said of the review jurisdiction in *National Bank of Kenya Ltd v Njau* (1997) eKLR:

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

12. The same Court stated in *Nyamogo & Nyamogo v Kogo* (2001) 1 EA 173:

An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the Court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.

13. The Motion by the Claimant requires this Court to examine the pleadings, re-evaluate the evidence, draw its own conclusions and satisfy itself that the reliefs sought by the Claimant and not addressed by the trial Court were merited.



14. If this Court were to venture to answer the questions, it would be required to relook at the evidence which was placed before the Court during the hearing, assess the same and decide whether the Claimant made a case for the award of the heads of claims for salary in lieu of notice and unpaid salaries.
15. In the Court's humble view, and regrettably, that is an exercise outside the scope of the review jurisdiction.

Orders

16. The Court declines to exercise its review jurisdiction and dismisses the Motion dated 22 April 2024 with no order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Onyango Odhiambo & Co. Advocates

For 1st Respondent did not enter appearance

For 2nd and 3rd Respondents Mukunga Wathome & Co. Advocates

Court Assistant Wangu

