



**Wekesa v Aga Khan Academy, Mombasa (Cause E015 of 2024)
[2025] KEELRC 324 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 324 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E015 OF 2024
M MBARŪ, J
FEBRUARY 6, 2025**

BETWEEN

ERICK WANJALA WEKESA CLAIMANT

AND

THE AGA KHAN ACADEMY, MOMBASA RESPONDENT

RULING

1. The claimant filed an application dated 8 October 2024 under Order 10 Rule 11, Order 45 Rule 2 and Order 51 of the Civil Procedure Rules seeking orders;

the court rectifies its 3rd order in the judgment delivered on 26 September 2024 where it awarded one month's notice pay of Ksh.262,500 and substituted it for the appropriate sum of Ksh.787,500 three months' notice pay as per the contract of employment.
2. The claimant supports the application through his affidavit and because the judgment herein was delivered on 26 September 2024 with various awards, including notice pay at one month. However, it was a contract term, and the notice should be three months or payment in lieu thereof. The award of one-month notice pay should be reviewed for three months. In the interests of justice, the orders sought are justified. The difference in the award is Ksh.525, 000 which is substantial and due.
3. In reply, the respondent filed the Replying Affidavit of Stella Njagi, head of human resources, who averred that the court's judgment awarded the claimant compensation, notice pay, and costs of the suit. Under Section 49 of the *Employment Act*, the court can award any or all the awards listed. The award of notice pay equivalent to one month's salary was in addition to the award of compensation. The court exercised its discretion in this regard.
4. The court stands functus officio, having rendered judgment herein, and the claimant's application lacks merit and should be dismissed with costs.



5. Both parties attended court, made oral submissions, and reiterated the affidavits.

Determination

- 6. A court's rectification of court orders, clarification, or correction of errors in a judgment should be premised on the provisions of Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024. This rule gives the court the power to review its decision on any mistake, error, rectification, or clarification.
- 7. The claimant's case is that his employment contract provided 3 months' notice pay, which he claimed under the Memorandum of Claim, but the court awarded one month's notice in error.
- 8. Indeed, prayer (b) of the Memorandum of Claim seeks payment of Ksh.787 500, three (3) months' pay instead of notice.
- 9. In the judgment delivered on 26 September 2024, the court awarded the claimant one (1) month instead of notice.
- 10. The court analyzed the issues in dispute and held that the termination of employment was unlawful and unfair. The claimant was awarded both compensation and notice pay.
- 11. Termination of employment is unlawful when the employer fails to adhere to the mandatory provisions of the law. It is also unfair when the employer fails to adhere to both statutory and substantive fairness. In assessing the notice pay due, the court is to be guided by the contract's written terms and conditions unless there is ambiguity.
- 12. In this case, parties agreed that upon termination of employment, each party had a duty to issue 3 months' notice or payment in lieu thereof. This is contractual and created a legitimate expectation that upon such occurrence, the aggrieved party would be issued a notice at 3 months or paid in lieu thereof.
- 13. In this regard, the court's discretion is fettered to the extent that parties were bound by the terms and conditions of the employment contract.
- 14. The claimant's application, put in context, is meritorious. The notice pay due to the claimant should be three months, not one month, as set out in the judgment delivered on 26 September 2024.
- 15. Application dated 8 October 2024 is with merit and is hereby allowed. Judgment herein is reviewed with orders that the claimant is entitled to notice pay at three (3) months being Ksh.787, 500; Judgment delivered on 26 September 2024 shall be rectified under Order (3) to read – Notice pays Ksh.787, 500 to the claimant.
- 16. Each party bears its costs for the application.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF FEBRUARY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

