



**Seii v LVCT Health (Employment and Labour Relations Cause
1452 of 2017) [2025] KEELRC 288 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 288 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1452 OF 2017**

JW KELI, J

FEBRUARY 5, 2025

BETWEEN

MERCY JEBET SEII CLAIMANT

AND

LVCT HEALTH RESPONDENT

RULING

1. The Respondent filed a notice of motion dated 1st October 2024 received in court on the 1st October 2024 and brought under Section 16 of the *Employment and Labour Relations Court Act*, 2011; Rules, 45 (1),74(1) (b) and (d) and (2) of the *Employment and Labour Relations Court (Procedure) Rules*, 2024 and all enabling provisions of the law seeking for the following orders:-
 1. Spent
 2. That this Honourable Court be pleased to review the judgment delivered on 30.07.2024 and the consequential orders made on the award of compensation made pursuant to the provisions of Section 49(1) (c) of the *Employment Act*, 2007 to an extent of five months' gross salary totaling to Kshs. 3,086,796/-.
 3. That the Honourable Court be pleased to review its orders on compensation owing to an error apparent on the face of the record in terms of total tabulation of the award noting that it was not disputed that the Claimant was earning a consolidated monthly salary of Kshs. 514,466/-
 4. That given that Claimant's monthly salary was Kshs. 514,466/- the tabulation for 5 months compensation as awarded by this Honourable Court ought to be Kshs.2,572,330/-and not Kshs. 3, 086,796/-.



5. That in place of such Orders, the Honourable Court be pleased to rectify the error in terms of tabulation of the 5 months' salary compensation awarded to the Claimant herein to Kshs. 2,572,330/-.
 6. That the award on 5 months' compensation as awarded and tabulated by this Honourable Court contains an arithmetic error that ought to be rectified by this Honourable Court.
 7. That the Honourable be pleased to issue such further orders as it may deem fit in the interest of justice.
 8. That there be no Orders for costs of this application.
2. The application was based on the grounds on the face of the application and supported by the annexed affidavit of Lilian Nyakerario Otiso sworn on 1st October 2024.

Summary of the grounds for the review

3. That the Claimant filed this suit on 25.07.2017 seeking for a declaration that she suffered unfair and unlawful termination of her employment with the Respondent, an order for reinstatement to her previous position without any loss of benefits, damages for mental stress, harassment and discrimination, payment of all terminal dues, maximum 12 months compensation for wrongful termination plus costs of the suit and interest.
4. That the suit came up for inter-partes hearing and this Honourable Court rendered its decision on 30.07.2024 declaring the Claimant's dismissal from employment as unfair.
5. That the Court further awarded the Claimant compensation for unfair termination of her employment pursuant to the provisions of Section 49 (1) (c) of the Employment Act, five months' gross salary and tabulated the award as Kshs.3,086,796/-, 1 month's salary in lieu of notice, Kshs. 514,466, Salary for 14 days worked in May 2017, Kshs. 240, 084.10/-, compensation for the 22 outstanding leave days, Kshs. 377,275/- plus costs and interest from the date of filing suit until full payment.
6. That the Honourable Court while tabulating the award on 5 months' compensation for unfair termination erroneously captured the total compensation awarded as Kshs.3,086,796/-instead of Kshs.2,572,330/-.
7. That at Respondent/Applicant became aware of the arithmetic error at the time of processing of payment of the award made by this Honourable Court now makes this application for review. See appendix A, a copy of the tabulation of dues payable to the Claimant as awarded by this Honourable Court.
8. That no appeal has been preferred against the said judgment.
9. That this application has been made without unreasonable and/or undue delay.
10. That in view of the foregoing, there is good and sufficient cause for the review of the judgment. That it is in the interest of justice, that the said Judgment be reviewed and varied as prayed.

Response

11. The replying affidavit of Mercy Jebet Seii (Judgment Holder) sworn on the 14th October 2024 did not deny the alleged gross monthly salary to be Kshs. 514,466. She simply stated the trial court did not make arithmetic error. That the court exercised its discretion in the award.
12. The application was canvassed by way of written submissions. Both parties filed



Decision

13. The applicable procedural rule on review by the court is Rule 74 of The [Employment And Labour Relations Court\(Procedure\) Rules, 2024](#) which states:-

“74.

- (1) 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.
- (2) An application for review of a decree or order of the Court under sub-rule (1) shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station
- (3) A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or ruling or order to be reviewed.
- (4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.
- (5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.”

13. My Brother Justice Ocharo Kebira having heard the case and now on transfer to Mombasa station, the burden was placed on me to decide on the application. The application for review of the Judgment dated 30th July 2024 by Justice Ocharo Kebira was premised on an error on the face of the record of arithmetic in the tabulation of compensation for award of the equivalent of 5 months' gross salary of the claimant. The respondent did not dispute the basis of the application being that her gross monthly salary was Kshs. 514,466.
14. At paragraph 5 of the Judgment it was stated that the claimant stated she was on a two-year fixed term contract earning a monthly consolidated salary of Kshs. 514.466.
15. The impugned Judgment was entered for the claimant , in part ;-“b) compensation for unfair termination of employment pursuant to the provisions of section 49(1)(C) of the [Employment Act](#) , five months gross salary, Kshs. 3,086,796/- “
16. The court noted that the Claimant was also awarded under paragraph 105(c) of the judgment one month salary in lieu of notice the sum of Kshs. 514,466.



17. The court, based on the foregoing held there was no dispute that the applicable gross monthly salary payable to the claimant was Kshs. 514,466 as awarded as notice in lieu and as stated by the claimant as captured in paragraph 5 of the judgment (supra). The court found that the error in computation of 5 months' salary was visible in the plain eyes of the court without any effort unlike in the case of *Reuben Kioko v Kenya Commercial Bank Ltd* (2012) eKLR. The compensation was awarded the equivalent of 5 months gross salary. Thus Kshs. 514,466 x 5 =2,572,330. The figure tallied with the position of the applicant. This was not a discretion of the Trial Judge issue but arithmetic. Such an error envisaged under Rule 75 of the Court Rules 2024 (supra) could be corrected by the court even on own motion to wit- "75. The Court shall, at the request of the parties or on its own motion, cause any clerical mistake, incidental error or omission to be rectified and shall notify the parties of such rectification." It was a clerical mistake or error.
18. The court found an arithmetic error in the computation of the compensation in the judgment dated 30th July 2024 which amounted to an error on the face of record meriting Order of review. The application for review is allowed by amendment of paragraph 105 (b) of the judgment awarding compensation of Kshs. 3,086,796 and in place of such Order, the Honourable Court rectified the error in terms to tabulation of the equivalent of 5 months' salary compensation awarded to the Claimant herein to Kshs. 2,572,330/-.
19. The Judgment in the suit dated 30th July 2024 is Hereby amended in Paragraph 105(b) to read:- 'b) compensation for unfair termination of employment pursuant to the provisions of section 49(1)(C) of the Employment Act , Five months' gross salary, Kshs. 2,572,330/-.
20. All other orders remain intact.
21. Each party is to bear its own costs in the application.
22. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF FEBRUARY, 2025.

J.W. KELI,

JUDGE.

In The presence of:

Court Assistant: Otieno

Appellant: - Ms. Okodo h/b Guserwa

Respondent/applicant: -Obiayo

