



Dawoodia v Muthaiga Travel Limited (Employment and Labour Relations Cause 1014 of 2016) [2025] KEELRC 1047 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 1047 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1014 OF 2016**

**JW KELI, J
MARCH 28, 2025**

BETWEEN

FEMINA DAWOODIA CLAIMANT

AND

MUTHAIGA TRAVEL LIMITED RESPONDENT

RULING

1. The applicant/ judgment debtor filed a Notice of Motion application dated 7th day of February, 2025 under Order 45 of the Civil Procedure Rules 2010 and sought for Orders that:-
 1. The application be certified urgent and be heard on priority prior to the delivery of the ruling in the Garnishee application on 28th February 2025.
 2. The judgment dated 26th September 2024 and the decree issued on 21st December 2024 be reviewed.
 3. The award of service pay be set aside or reviewed.
 4. The award of unpaid mileage allowance and unpaid entertainment allowances be set aside or reviewed.
 5. The costs of this application be provided for.
2. Grounds of the application
 - a. The Judgment and decree were passed or procured on false and perjured evidence of the Claimant;
 - b. The Claimant obstructed justice by giving false and perjured evidence and thereby misled the Court;



- c. Being employed as an executive director of the Respondent at the time of termination of her employment, the Claimant was not entitled for service pay;
 - d. Alternatively, and without prejudice to the above, having resigned from her employment, the Claimant was not entitled to be awarded the relief of service pay;
 - e. There is a glaring error apparent on the face of the record;
 - f. There was miscarriage of justice in the said judgment and decree.
3. The Application was further supported by the annexed Affidavit of Klarissa Wills dated 7th February 2025 who produced as KW1 a copy of the Notice of Motion application filed by the respondent in Misc. Application. No. 560 of 2016 where the claimant stated in ground 2 in support of the Motion and admitted that:- “that on or about 1st April 2000 the applicant who was initially employed as a branch manager of the 1st Respondent company acquired 5% shareholding in the 1st respondent company and was employed as a director of the 1st respondent “
 4. The Applicant contended that the said case closed or terminated in a ruling dated 30th march 2017 and by time of trial it was a closed matter. That the claimant was under statutory obligation to tell the truth. That having resigned from her position the claimant was not entitled to award of legal service pay. That there was glaring error in the award of mileage allowance and entertainment allowance. That the payment of the claims was subject of income tax which requires that the claimant must produce verifiable receipts to support the claim.
 5. The application was opposed by the claimant vide her affidavit dated 19th February 2025 on the basis that the application was improper for failure to annex the Decree sought to be reviewed, that that application was filed 5 months after judgment of 26th September 2024 and following the hearing of her application for garnishee slated for Ruling on the 28th march 2025. The applicant was aware of the said affidavit in Misc. Application. No. 560 of 2016 at the trial; hence no discovery of new evidence. The Applicant asserted that nowhere had she given false evidence as she always maintained she had two roles at the company, of branch manager and director and annexed her witness statement as “FD”, the defence, and reply to defence.
 6. The application was canvassed by way of written submissions. Both parties complied.

Decision.

7. The application was filed under Order 45 of the Civil Procedure Rules 2010 to wit:-
 “Application for review of decree or order [Order 45, rule 1]
- (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.



- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
8. The applicant relied on affidavit by the respondent of 8th December 2016 and stated that the same was in respect to a matter closed on 30th March 2017. The matter was High Court at Nairobi Misc. Application. No. 560 of 2016 between the parties and others not before this court. The claim was filed on the 30th of May 2016 and the defence and counterclaim filed 15th September 2016. The applicant produced her witness statement at trial dated 27th May 2016 and in paragraph 3 the court noted that the claimant disclosed the directorship in the applicant company. In the defence statement clause 4.4 the applicant raised issue of the claimant being executive director. In clause 5 of the defence the applicant alleged that the claimant absconded her employment.
9. The court finds that under Rule 74 of the Employment and Labour Relations Court(Procedure) Rules 2024, it is not a must to annex the Decree. It is the judgment or decree. Rule 74 (3) of the court Procedure rules 2024 reads:- “(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.”
10. The Court of Appeal in National Bank of Kenya Ltd v Ndungu Njau (Civil Appeal No.211 of 1996) stated with regard to review:-
- “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 require no 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.” The court upheld the forgoing decision and held that the instant application does not meet the threshold for review. There is no new information disclosed. Further the application challenged merits of the award which are grounds of appeal and not review by stating:- That having resigned from her position the claimant was not entitled to award of legal service pay. That there was glaring error in the award of mileage allowance and entertainment allowance. That the payment of the claims was subject of income tax which requires that the claimant must produce verifiable receipts to support the claim.
11. The application is held to be without merit for review and further the Court holds that grounds are subject of appeal.
12. The application is dismissed with costs to the respondent.
13. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

**J.W. KELI,
JUDGE.**

In The Presence Of:



Court Assistant: Otieno

Applicant- Otieno h/b Oyasti

Respondent: Washika

