



**Gombe v Agricultural Finance Corporation (Cause 371 of 2012)
[2025] KEELRC 957 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 957 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 371 OF 2012
BOM MANANI, J
MARCH 27, 2025**

BETWEEN

WALTER GOMBE CLAIMANT

AND

AGRICULTURAL FINANCE CORPORATION RESPONDENT

RULING

1. The Respondent/Applicant (hereafter referred to as the Applicant) filed the application dated 16th July 2024 seeking to review the judgment of the court delivered on 12th October 2023 on account of an error in the decision. It contends that the court erroneously computed the compensation it awarded to the Claimant/Respondent (hereafter referred to as the Respondent) using the figure of Ksh. 130,040.30 instead of Ksh. 42,492.30 as his monthly salary.
2. The Applicant contends that at the time of the Respondent's departure from employment, his salary was Ksh. 42,492.30. As such, it is this figure which ought to have been applied to compute the compensation that was awarded to him. To support this contention, the Applicant has annexed to the application the Respondent's pay slip for March 2010 marked as JK1.
3. A perusal of the court record shows that the pay slip for March 2010 was not tendered in evidence during trial of the case. The only pay slip which was tendered in evidence was the one for the month of December 2009.
4. The pay slip for December 2009 appears as item one (1) in the Respondent's supplementary list of documents dated 15th January 2020. It placed the Respondent's gross pay at Ksh. 130,040.30. It is this pay slip which the court relied on to compute the compensation due to the Respondent.
5. The law on review of decisions by the Employment and Labour Relations Court is anchored on section 16 of the *Employment and Labour Relations Court Act* as read with rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (ELRC Rules). On the one hand, the Act empowers



- the court to review its decisions in accordance with the ELRC Rules. On the other, the ELRC Rules set the boundaries within which the court may exercise this power.
6. The ELRC Rules delimit the court's boundaries in entertaining applications for review in two ways. First, they bar it (the court) from entertaining a motion for review if the parties to the decision that is sought to be reviewed have instituted an appeal against it (the decision). Second, they prescribe the grounds upon which the application for review is to be anchored.
 7. The law prescribes the following as the grounds for review of a decision:-
 - a. The discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by the applicant at the time when the decree was passed or the order made;
 - b. The presence of a mistake or error apparent on the face of the record;
 - c. The need to clarify the judgment or ruling; or
 - d. If there is sufficient reason to warrant review.
 8. According to the application before court, the Applicant seeks to review the court's decision on the ground that there is an error in the judgment. It (the Applicant) does not cite any other reason for the request.
 9. The Respondent has objected to the application on a point of law which, to my mind, goes to the jurisdiction of the court to grant the orders sought. He contends that when the Applicant lodged the Notice of Appeal dated 23rd October 2023 against the impugned decision, it in effect filed an appeal against the decision. As such, it (the Applicant) cannot simultaneously move this court for review of the decision.
 10. In effect, what the Respondent expresses through this objection is that the jurisdiction of the court to entertain the application was ousted once the Applicant filed the Notice of Appeal. As such, the application is incompetent and the court is bereft of the requisite jurisdiction to entertain it.
 11. Notwithstanding that the Respondent flagged this matter, the Applicant did not respond to it. There was no denial by it (the Applicant) that indeed it had lodged a Notice of Appeal against the impugned decision.
 12. Whether the court can entertain the application for review in the face of the subsisting Notice of Appeal is a matter of law. It goes to the jurisdiction of the court to entertain the application. As such, notwithstanding that the Applicant did not address the matter, the court must determine it.
 13. I have perused the court record and note that indeed there are two Notices of Appeal filed against the court's judgment. The first one (dated 24th October 2023) was filed by the Applicant. The second one (dated 25th October 2023) was filed by the Respondent.
 14. The court record shows that the instant application was lodged on 17th July 2024. This was long after the parties had lodged the aforesaid Notices of Appeal.
 15. There is no indication that the two Notices of Appeal were withdrawn either before or after the application was lodged on 17th July 2024. As such, they remain in place. What is the legal implication of this?
 16. The law that regulates filing of civil appeals before the Court of Appeal is to be found in the [Appellate Jurisdiction Act](#) as read with the Court of Appeal Rules. Rule 77 of these rules provides as follows:-



“A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.”

17. This rule underscores the fact that an appeal to the Court of Appeal is instituted through lodging of a Notice of Appeal. As such, presentation of a Notice of Appeal signifies the taking of the first step towards filing an appeal to the court.
18. The Court of Appeal Rules define the term “appeal” to include an intended appeal. Speaking to this reality, rule 2 of the rules states as follows:-

““appeal”, in relation to appeals to the Court, includes an intended appeal.”
19. A study of past decisions relating to institution of appeals in the Court of Appeal in Kenya demonstrates that there was considerable controversy relating to when an appeal is deemed as filed. Is it when a Notice of Appeal is lodged or when a Record of Appeal containing the Memorandum of Appeal is lodged? This controversy spanned across the High Court, courts of equal status and the Court of Appeal.
20. Luckily, the controversy was settled by the Court of Appeal in the case of *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 Others* [2020] eKLR. In a specially constituted bench of the court to resolve the apparent divergence of opinion on the subject, the learned Justices arrived at the conclusion that filing of a Notice of Appeal does not signify the presence of an appeal except for purposes of enabling the Court of Appeal to assume jurisdiction over applications that are filed pursuant to rule 5(2) (b) of the Court of Appeal Rules.
21. Outside the aforesaid provision, the accepted position is that an appeal to the Court of Appeal is considered as filed once the appellant has lodged and paid for the Record of Appeal containing the Memorandum of Appeal. As such, the lodging of a Notice of Appeal does not, *stricto sensu*, amount to institution of an appeal. It only expresses the intention to appeal.
22. In view of the foregoing, I find that although the Applicant had lodged the Notice of Appeal dated 23rd October 2023 against the court’s decision of 12th October 2023 at the time it filed the application for review of the decision, it (the Applicant) was yet to file an appeal against the decision at the time as it was yet to lodge and pay for the Record of Appeal containing the Memorandum of Appeal. As such, the application for review does not offend the limitations imposed by rule 33 of the ELRC Rules.
23. At the time of filing the instant application, the Applicant had only expressed the intention to appeal by filing a Notice of Appeal. However, it had no active appeal pending before the Court of Appeal. As such, it was entitled to file the application.
24. Consequently, the court arrives at the conclusion that the application is competent. As such, it (the court) is seized of the requisite jurisdiction to consider it (the application) on the merits
25. The contention by the Applicant is that the court took into account an erroneous figure of Ksh. 130,040.30 as representing the Respondent’s monthly salary to compute the compensation that was awarded to him. The Applicant contends that the Respondent’s gross salary at the time was Ksh. 42,492.30. It (the Applicant) has presented the Respondent’s pay slip for the month of March 2010 to support its contention.
26. As the court record demonstrates, the Applicant did not present the pay slip of March 2010 in evidence during trial of the case. As such, there is no way that the court would have referred to it to ascertain the Respondent’s exit salary.



27. That said, the aforesaid pay slip demonstrates that the amount of Ksh. 130,040.30 which is indicated as the Respondent's gross pay in his pay slip for December 2009 was not, in fact, his monthly gross pay. His gross pay was Ksh. 42,492.30 per month.
28. It is noteworthy that in the Respondent's response to the application, he does not deny that his monthly gross salary was Ksh. 42,492.30 as contended by the Applicant. As such, he impliedly concedes this fact.
29. A perusal of the December 2009 pay slip shows that the figure of Ksh. 130,040.30 which was described as the Respondent's gross pay includes basic salary arrears of Ksh. 87,548.00. This was not part of the regular monthly gross pay to the Respondent.
30. As such, inclusion of the above figure in the Respondent's pay slip for December 2009 resulted in a misrepresentation of his monthly pay resulting in the wrong impression that his gross monthly salary was Ksh. 130,040.30. This resulted in an error.
31. The aforesaid error does not require detailed analysis to discern. It is apparent on the face of the record.
32. Alluding to what constitutes an error on the face of the record, the court in the case of Njoroge & 104 others (suing in representative capacity for Kariobangi South Civil Servants Estate tenant Purchasers) v Savings & Loan Kenya Ltd & another [1988] eKLR quoting from Mulla on the Indian Code of Civil Procedure (13th Ed) expressed itself on the matter as follows:-

'...an error that...is apparent on the face of the record.....is obvious and self-evident and does not require an elaborate argument to be established.'
33. What the Applicant points out, in my respectful view, is a misstatement in the Respondent's pay slip of December 2009 which resulted in the court using an inaccurate figure to compute the compensation that it awarded to the Respondent. As such and in the court's view, the resultant error is amenable to correction through an application for review.
34. The Respondent contends that the application has been overtaken by events since the Applicant has paid the decretal amount save for interest. He accuses the Applicant of indolence and avers that the application was only presented after he moved to execute for what remains to be settled under the decree.
35. The Respondent further contends that the application for review was filed eight months after the impugned judgment was delivered. According to him, the duration between the date of delivery of the judgment and the date of filing the application was inordinately long. He contends that the Applicant has not accounted this time lapse.
36. It is probable that the Applicant has paid the decretal sum as contended by the Respondent. However, this does not constitute a bar to correcting the aforesaid error.
37. The law requires an application for review to be filed within reasonable time. However, what amounts to reasonable time is not cast in stone. It is a matter of fact that is to be decided on case by case basis.
38. In this case, the Applicant contends that the error was discovered on 3rd July 2024 whilst it was scrutinizing the Respondent's demand for payment. It is noteworthy that the instant application was presented to court on 16th July 2024, hardly twelve (12) days after the Applicant discovered the error. As such, the application was not filed after undue delay.



Determination

39. Accordingly, the court grants the application dated 16th July 2024 in the following terms:-

- a. Paragraph 4 of the judgment dated 12th October 2023 is reviewed and corrected to reflect the Respondent's monthly gross salary as Ksh. 42,492.30 instead of Ksh. 130,040.30.
- b. Paragraph 71 of the judgment dated 12th October 2023 is reviewed and corrected to reflect the compensation awarded to the Respondent as Ksh. 42,492.30 x 3 = Ksh.127,476.90 instead of Ksh. 130,040.30 x 3 = Ksh. 390,121.00.
- c. Save for the above alterations, the rest of the judgment remains the same.
- d. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED ON THE 27TH DAY OF MARCH, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Respondent

.....for the Respondent/Applicant

order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

