Kamau v Del Monte Kenya Limited (Cause 1070 of 2018)
[2025] KEELRC 884 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 884 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 1070 OF 2018

L NDOLO, J

MARCH 20, 2025

BETWEEN

NANCY WANJIKU KAMAU ..... CLAIMANT

AND

DEL MONTE KENYA LIMITED ..... RESPONDENT

RULING

1. On 31st July 2024, I delivered judgment in favour of the Claimant in the sum of Kshs. 1,159,200 being 6 months' salary in compensation for unlawful and unfair termination of employment.

2. Thereafter, the Claimant moved the Court by way of Notice of Motion dated 29th August 2024, seeking review of the judgment, on account of alleged failure by the Court to consider the issue of violation of the Claimant's fundamental labour rights.

3. The Motion is supported by the Claimant's own affidavit and is based on the grounds that:

    a. The Court only dealt with two issues in its determination of the suit being; whether the termination of the Claimant's employment was lawful and fair, and whether the Claimant was entitled to the remedies sought;

    b. Prayer (b) of the Claimant's Statement of Claim sought a declaration that the termination was inhuman and in violation of her fundamental rights, and damages to issue;

    c. The Court was mute on the issue of violation of the Claimant's labour rights and therefore failed to award any damages in regard to that prayer;

    d. The Court rightly found that the termination was unlawful and unfair but only awarded damages in lieu of the unlawfulness and unfairness, thereby leaving out the prayer on violation of the Claimant's labour rights;

e. Having been expressly pleaded and prayed for, the Claimant believes that failure to include the said prayer and award compensation was an omission which can be cured by the Court through this application;

f. This application is brought in good faith and with the sole purpose of aiding successful and rightful delivery of justice.

4. The Respondent opposes the application, stating that the grounds advanced in the application are grounds of appeal and not review.

5. The jurisdiction of the Employment and Labour Relations Court, to review its own decisions, is donated by Section 16 of the *Employment and Labour Relations Court Act* and Rule 74 of the *Employment and Labour Relations Court (Procedure) Rules*. Rule 74(1) provides as follows:

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 new and important matter or evidence, which after 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; or

b. on account of some mistake or error apparent on the face of the record; or

(c) if the judgment or ruling requires clarification; or

(d) for any other sufficient reason.

6. The margins of the provision for review are fairly narrow; and courts are cautioned against using this provision to sit on appeal over their own decisions.

7. In its written submissions dated 26th February 2025, the Respondent cited the Court of Appeal decision in *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR where it was held that:

> " A review may be granted whenever the court considers 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."

8. The Court of Appeal, in its decision in *Nyamogo and Nyamogo Advocates v Kogo* (2001) EA 173, stated as follows:

> " 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 options, 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."

9. The foregoing position has held sway over the years, and in the more recent decision in *Francis Njoroge v Stephen Maina Kamore* [2018] eKLR it was held that a wrong view on an issue may be a ground for appeal but certainly not a ground for review.

10. In *Republic v Advocates Disciplinary Tribunal Ex Parte Apollo Mboya* [2019] eKLR, Mativo J (as he then was) affirmed that an error which is not self-evident and which requires a long drawn argument, cannot be treated as an error apparent on the face of the record. The learned Judge went further to clarify that the provision for 'any other sufficient reason' as a ground for review, must be interpreted in light of the other specified grounds.

11. By her application, the Claimant asks the Court to re-open the case and consider what she terms as an omission with regard to the distinct plea on violation of her fundamental rights. Assuming the Claimant is right that the Court failed to consider this plea, such an error cannot be corrected by way of an application for review. I say so because a ruling on this issue would require a long drawn process of reasoning, which is not available in review applications.

12. For the foregoing reasons, the Claimant's application dated 29th August 2024, is declined with an order that each party will bear their own costs.

13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY MARCH 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Wesonga for the Claimant

Mr. Uvyu for the Respondent