



**Shollei v Keroche Breweries Limited (Cause 35 of 2019)
[2025] KEELRC 1584 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1584 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 35 OF 2019**

J RIKA, J

MAY 30, 2025

BETWEEN

SAM KRUS SHOLLEI CLAIMANT

AND

KEROCHE BREWERIES LIMITED RESPONDENT

RULING

1. The Respondent filed an application dated 14th May 2025, under certificate of urgency, seeking review of Judgment delivered on 27th September 2022.
2. The application is premised on various grounds, including that: there was error apparent on the face of the record; misapplication of the *Employment Act* 2007; and the presence of newly discovered evidence, including that of the Respondent's Director Tabitha Karanja, which was not available at the time of the hearing.
3. The application was lodged while the file was in the custody of the Judge, for preparation of a different ruling on another application filed by the Respondent. The Respondent seeks to have execution of decree stayed and Judgment set aside or varied, in that other application.
4. Ruling in that other application was scheduled for 30th May 2025, and the Court directed Parties to file and exchange their submissions on the current application for review, with the ruling to be delivered simultaneously with the ruling earlier scheduled for delivery on 30th May 2025.

The Court Finds: -

5. The Respondent submits that the Judgment sought to be reviewed was the subject of an appeal lodged at the Court of Appeal by the Respondent, which was dismissed for non-attendance.
6. Its position is the that the Court of Appeal did not address the substantive grounds of appeal.



7. It is submitted that the E&LRC has jurisdiction to review its Judgment under Section 16 of the *Employment and Labour Relations Court Act*, and Section 80 of the *Civil Procedure Act*, 2010 and Order 45 Rule 1 of the *Civil Procedure Rules*, 2010.
8. The Respondent submits that award of Kshs. 15,000,000 as 6 months' notice pay was erroneous, as the Claimant had already been paid Kshs. 7,005,504; new and important evidence from the Respondent's Director Tabitha Karanja, who was unavailable at the trial, has been discovered; and there is sufficient reason to review Judgment.
9. The review jurisdiction of this Court is conferred by Section 16 of the *E&LRC Act*, and regulated by Rule 74 of the *E&LRC [Procedure] Rules* 2024.
10. Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules*, invoked by the Respondent, are irrelevant to the proceedings herein.
11. Rule 74 [1] of the *E&LRC [Procedure] Rules*, 2024, allows 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, to within a reasonable time, apply for a review of the decision. The grounds upon which review may be pursued, are listed under Rule 74.
12. The Respondent preferred an appeal against the Judgment of the Court delivered on 27th September 2022. Having preferred an appeal at the Court of Appeal, the Respondent cannot return to the Trial Court and seek review of Judgment.
13. It is immaterial that that the Court of Appeal dismissed the appeal for non-attendance, and that there was no merit hearing and determination of the appeal. The Respondent preferred an appeal, and cannot invoke the review jurisdiction of the Trial Court.
14. The application for review of Judgment is in abuse of the process of the Court.
15. Other reasons that make this application untenable may be gathered from the earlier application filed by the Respondent, seeking stay of execution and setting aside of Judgment.
16. It was clear in that application that the Director Tabitha Karanja, who is alleged to have new and important evidence, held a meeting with the Claimant, and consented in writing to pay the decretal sum, in instalments. There were no errors in the Judgment of the Court, discussed at the meeting between Tabitha Karanja and the Claimant. There was a consent on satisfaction of the decree. What new evidence, while there is a consent on the mode of satisfying the decree?
17. Instead of honouring her own word, the Director and her Respondent company, have resorted to all manner of actions, aimed at frustrating satisfaction of the decree.
18. Auctioneers instructed by the Claimant have been turned away from the Respondent's business, when they went there to attach the Respondent's assets in execution of valid warrants from the Court. Police Officers ordered by the Court to provide auctioneers with security, were instructed by their superiors to abort the mission, while already at the premises. The Claimant states that he has engaged the Inspector General of Police, on this dereliction of duty by officers.
19. The Respondent is in serial disobedience of the orders of this Court, and the application for review, is another attempt at delaying satisfaction of the decree. The Court, as held in the other application, has reached the limit of its jurisdiction. It is functus officio. It cannot revisit the Judgment delivered on 27th September 2022.

It is ordered: -



- a. The application filed by the Respondent dated 14th May 2025 is declined.
- b. Costs to the Claimant.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF MAY 2025.

JAMES RIKA

JUDGE

