



REPUBLIC OF KENYA



KENYA LAW
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**Mbarire v Kenya Airways Limited (Cause 2399 of 2017)
[2025] KEELRC 1492 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1492 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2399 OF 2017**

**S RADIDO, J
MAY 22, 2025**

BETWEEN

JOHN MIRITI MBARIRE CLAIMANT

AND

KENYA AIRWAYS LIMITED RESPONDENT

RULING

1. In a judgment delivered on 4 March 2024, the Court rendered itself:

The Court having considered the recompense by way of 12 months salary would be transient since monetary damages are plagued by devaluation and economic vagaries like inflation, a poorly performing economy and the like, the Court holds that the Claimant would be entitled to a normal termination, meaning he retains his benefits. In regard to costs, the Court finds and holds that the Claimant would be entitled to his costs for the suit granted that he was largely successful in his claim.

2. On 5 June 2024, the Claimant filed a Motion seeking orders:

- i. ...
- ii. This Honourable Court do review and clarify the Award made on 4/3/2024.
- iii. That this Honourable Court do tabulate concisely the sums awarded to the Claimant as benefits.
- iv. That this Honourable Court do grant any other relevant order it considers just.
- v. That the costs of this application be awarded to the Claimant.



3. The grounds in support of the Motion were that the judgment was not concise; the judgment was incapable of being enforced or executed; after judgment, the Claimant tabulated his benefits at Kshs 115,070,214/- but later reviewed it to Kshs 45,465,651/- but the Respondent declined to pay and that it was necessary to review the judgment for it to be executable.
4. The Respondent filed a replying affidavit sworn by its Senior Manager, Industrial Relations on 24 June 2024, in opposition to the Motion.
5. In the affidavit, it was deponed that the Claimant had filed a Notice of Appeal against the judgment; that by filing a Notice of Appeal, the Claimant had waived the right to seek a review of the judgment; the judgment was clear and capable of enforcement; the Court did not award lost future income; the benefits due to the Claimant were ascertainable upon a look at the contractual documents and that the Motion should be dismissed with costs.
6. The Court gave directions on the Motion on 15 October 2024 and 10 March 2025.
7. Consequently, the Claimant filed his submissions on 23 April 2025 (should have been filed and served before 31 March 2025), and the Respondent on 24 April 2025 (should have been filed and served before 18 April 2025).
8. The Court has considered the Motion, affidavits and submissions and makes the following determinations.
9. One, the Respondent lodged a Notice of Appeal against the judgment sought to be reviewed/clarified on 6 March 2024, while the Claimant lodged a Notice of Appeal on 14 March 2024.
10. Under section 80 of the *Civil Procedure Act*, the right of a party to seek a review is restricted where an Appeal has been preferred (see also Order 45 Rule 1).
11. The Respondent lodged a Notice of Appeal against the judgment on 6 March 2024, and the Claimant on 14 March 2024.
12. It is not open to them to come back to this Court to seek a review of the judgment.
13. Lastly, the Claimant tabulated part of the benefits he was claiming as:
 - i. Six months' salary in lieu of notice.
 - ii. Transport allowance.
 - iii. Lay over allowance.
 - iv. Owner occupier allowance.
 - v. Productivity allowance.
 - vi. Provident fund.
 - vii. Medical allowance.
 - viii. Prorated leave.
14. In his submissions, the Claimant asserted that under a normal termination, he would have been entitled to all the dues/benefits he would have earned until retirement but for the termination of employment.



15. To determine whether the Claimant is entitled to the benefits, the Court would be required to examine the evidence placed before the Court, and perhaps contractual records that were not produced in evidence.
16. In the Court's view, such an exercise would be a venture outside the scope of the Court's review jurisdiction.

Orders

17. The Motion dated 5 June 2024 is found without merit and is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 22ND DAY OF MAY 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Okong'o Wandago & Co. Advocates

For Respondent Mohamed Muiga LLP

Court Assistant Wangu

