



**Timaflo Limited v Ndai (Cause E013 of 2023 & E004 of 2024 (Consolidated)) [2025] KEELRC 1470 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1470 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E013 OF 2023 & E004 OF 2024 (CONSOLIDATED)**

**ON MAKAU, J  
MAY 16, 2025**

**BETWEEN**

**TIMAFLO LIMITED ..... CLAIMANT**

**AND**

**JUDY NJERI NDAI ..... RESPONDENT**

**RULING**

1. On 19<sup>th</sup> December, 2024, I delivered judgment in which rendered myself as follows:

“Consequently, I enter judgment in the following terms:

- a. The respondent to pay the claimant Kshs.1,864,574.29 being the balance of her staff loan.
- b. The claimant to pay the respondent the following:
  - i. Salary in lieu of notice.....Kshs. 885,594.00
  - ii. Compensation.....Kshs. 5,903,960.00
  - iii. Leave.....Kshs. 787,194.66

Total Kshs 7,576,748.66

In the end, I decree that the claimant shall pay the respondent Kshs.7,576,748.66 less kshs.1,864,574.29 leaving a net of Kshs. 5,712,174.37. The sum will attract interest at court rates from the date of filing her suit until payment in full.”

2. Aggrieved by the said judgement the Claimant has proffered this Application seeking orders that:



- a. This Honourable Court be pleased to review its judgement and decree herein dated 19<sup>th</sup> December 2024 and order that:
    - i. The award of Kshs. 5,712,174.37 is subject to applicable statutory deductions.
    - ii. That the award of Kshs. 885,594.00 being the salary in lieu of notice and Kshs. 5,903,960/= being 10 months gross salary as compensation for unfair termination do accrue interest at court rates from date of the judgement until payment in full.
  - b. The costs of the application be provided for.
3. The motion is supported by the Affidavit sworn by Thomas Fransen on 23<sup>rd</sup> December 2024 and it is contested by the respondent vide Grounds of Opposition date 28<sup>th</sup> January 2025.
  4. The gist of the claimant's case is that there is an error apparent on the record which needs to be rectified. Specifically, the claimant pointed out that the award of Kshs. 5,712,174.37 ought to be subjected to statutory deductions as per the law; and that the award of salary in lieu of notice and compensation for unfair termination ought to attract interest from the date of the judgment and not from the date of filing the suit as ordered.
  5. However, the respondent averred that the application is misconceived, bad in law and an abuse of court process; that the issues raised ought to be canvassed in an appeal and not a review; that the Respondent particularized her claim from date of filing; that the statutory deductions if any should be on the net amount and not gross; and that the application is filed in bad faith with intention of delaying her payments.
  6. Both sides have filed written submissions to canvass the motion. I have considered the rival contentions made by parties together with the impugned judgment. The issue for determination is whether the application meets the legal threshold for review of the said judgment.
  7. Rule 74(1) of this Court's Rules, 2024 provides for review of decisions of the Court 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 a new and important matter or evidence which, despite 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;
      - (b) on account of some mistake or error apparent on the face of the record;
      - (c) if the judgment or ruling requires clarification; or
      - (d) for any other sufficient reason.”
  8. Flowing from the above Rule, the threshold for review is met if the applicants demonstrate to the satisfaction of the court that:
    - a. The application has been made without unreasonable delay.
    - b. No appeal has been preferred to impugn the same decision.



- c. Any of the grounds of review listed under subrule (a) – (d) exists.
9. In this case, there is no doubt that the application was made only four days after the delivery of the impugned judgment and that no appeal was lodged against the judgment. Consequently, the first two requirements have been met.
10. As regards existence of an error apparent on the face of the record, which was the substantive ground for cited, I seek guidance from the case *Nyamogo and Nyamogo v Kogo* [2001] EA 174 where the Court of Appeal held that:
- “An error apparent on the face of the record cannot be defined precisely and exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. 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 opinions, 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.”
11. To begin with the applicant argues that the law provides that compensatory damages ought to be subjected to statutory deductions and faulted the court for ordering it to pay the respondent Kshs. 5,712,174.37 as net pay. According to the applicant, the said order means that it will be called upon pay tax on behalf of the respondent.
12. The contentious paragraph of the judgment stated as follows:
- “In the end, I decree that the claimant shall pay the respondent Kshs.7,576,748.66 less kshs.1,864,574.29 leaving a net of Kshs. 5,712,174.37. The sum will attract interest at court rates from the date of filing her suit until payment in full.”
13. The phrase, “leaving a net of Kshs.5,712,174.37”, has been misapprehended. In the above context, it only meant the balance payable to the respondent after deducting the sum proved in the counterclaim.
14. As regards the tax chargeable on the decreed sum, my view is that nothing barred the applicant from paying the said net amount less statutory deductions pursuant to section 49(2) of the *Employment Act*. In my considered opinion, a court order is not needed for an employer to make the deduction since there is already a statutory command to do so. Section 49(2) provides that:
- “Any payments made by the employer under this section shall be subject to statutory deductions.”
15. With respect to the date, when interest on the decreed sum should start to accrue, the respondent pleaded in Meru ELRC No. E004 of 2024 as follows:
- a. A declaration that her termination from employment was wrong, unfair, unlawful and unconstitutional.



- b. A declaration that the Claimant is guilty of unfair labour practices including racial discrimination.
  - c. That she be awarded general damages for unfair labour practices, discrimination and violations.
  - d. Compensation for unlawful termination equivalent to 12 months' gross salary amounting to Kshs. 8,225,424/=.
  - e. Payment in lieu of notice equivalent to 3 months' gross salary of Kshs. 2,056,356/=.
  - f. Severance pay amounting to Kshs. 5,140,890/=.
  - g. Unpaid leave for 40 days amounting to Kshs. 913,936/=.
  - h. Costs of the claim.
  - i. Interests on all the payment above, as from the date of judgement until payment in full.
  - j. Any other relief that the Court may deem fit to grant in the interest of justice.
16. In the impugned judgment I awarded the interest from the date of filing the suit, which was indeed contrary to the pleading. That was a mistake or an error on the face of the record which justifies rectification by way of review. Consequently, I am satisfied that the applicant has proved that there is a mistake or error apparent on the face of the record that warrants me to review and clarify the judgment.
17. The offending paragraph of the judgment is corrected to read as follows:
- “In the end, I decree that the claimant shall pay the respondent Kshs.7,576,748.66 less kshs.1,864,574.29 leaving a net of Kshs. 5,712,174.37. The sum will attract interest at court rates from the date of the judgment until payment in full. For avoidance of doubt the decreed sum is subject to statutory deductions”
18. For the reasons stated above, the notice of motion dated 23<sup>rd</sup> December 2024 is allowed to the extent highlighted above. Each party to bear own costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 16<sup>TH</sup> DAY OF MAY 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

**ONESMUS N MAKAU**

**JUDGE**

