



**Kurgat v Taheer alias Esmaily t/a Associated Glass and Hardware Ltd
(Cause 295 of 2017) [2025] KEELRC 1452 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1452 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 295 OF 2017
MA ONYANGO, J
MAY 15, 2025**

BETWEEN

SIMON KURWA KURGAT CLAIMANT

AND

**MOHAMMED TAHEER ALIAS ESMAILY T/A ASSOCIATED GLASS AND
HARDWARE LTD RESPONDENT**

RULING

1. Judgment in this suit was delivered on 7th February, 2025. In the judgment the court awarded the following:
 - a. Unpaid leave dues..... Kshs 8,267.00
 - b. Underpayments Kshs. 43,756.80
 - c. The Respondent shall bear the Claimant's costs.
 - d. The decretal sum shall attract interest from date of Judgement.
2. *Vide* an application dated 22nd April, 2025, the Respondent seeks the following orders:
 1. That the Claimant/Respondent's Advocate has declined and/or refused to receive the Respondent/Applicant's Advocate's cheque dated 7th March, 2025 for Kshs. 41,084.60 in satisfaction of the decree and yet the thirty (30) days granted by the court on 7/2/2025 within which to satisfy the court's decree have since lapsed and the Claimant Respondent is likely to execute the decree at any time without disclosing the fact that his advocate declined to receive payment hence this application for stay of execution and leave to deposit the funds/cheque in court in satisfaction of the decree thereof.



2. That unless the orders sought herein are issued, the Respondent/Applicant risks to suffer irreparable harm on account of the Claimant/Respondent's Advocate's refusal to receive the judgement sum.
 3. That this court has power to entertain and grant the orders sought herein.
 4. That the Application is brought timeously and in good faith.
3. The application is supported by the grounds on its face and the affidavit of Alfred Kingoina Nyairo, counsel for the Applicant, in which he reiterates the grounds on the face of the affidavit.
 4. In brief, the Respondent states that there is an error on the face of the judgement in the calculation of the award on underpayments as follows:
 1. Underpayments – Ksh.43,756 worked out as follows:

$$(3,645 \text{ (underpaid amount)} \times 12 \text{ (period of underpayment)}) = \text{Kshs.}43,756.80$$

$$\text{Total} = \text{Kshs.}52,023.80$$
 5. It is stated that the Claimant worked for the Respondent for 9 months yet he was awarded 12 months dues. That the correct figure should be Kshs. 32,817.60 yet he was awarded 43,757.80 on underpayments.
 6. Counsel states that his attempts to have the correction done by consent was not agreed to by counsel for the Claimant who also rejected the cheque from the Applicant for Kksh.32,817.60 based on the correct computation.
 7. It is the averment of counsel for the Respondent/Applicant that the correction of the arithmetical error can be done under the slip rule under section 99 and 100 of the *Civil Procedure Act* and Rule 75 of the *Employment and Labour Relations Court (Procedure) Rules, 2024*.
 8. The Claimant filed a Replying Affidavit of JOB K. RUGUT, counsel for the Claimant in which he deposes that he received the letter written on “without prejudice” basis from counsel for the Applicant dated 26th February, 2025 informing him that there was an error in the judgment. That he responded to the letter that the said error should be verified by the court before he could sign the consent.
 9. He stated that according to the Claimant the payment should be for 10 months and not 9 months as proposed by the Applicant.

Determination

10. I have re-read the pleadings, evidence and judgment. I have noted that from paragraph 3 of Respondent’s Statement of Defence, it is pleaded that the Claimant was in the Respondent’s employment from August, 2016 to 31st May, 2017. I therefore agree with Mr. Rugut that the Claimant worked for 10 months and not 9 months as stated in the judgement. I further agree with the Applicant that there was an arithmetical error in the tabulation of underpayment in the judgment.
11. By virtue of the powers of this court under section 16 of the *Employment and Labour Relations Court Act* and Rule 75 of the *Employment and Labour Relations Court (Procedure) Rules, 2024*, I accordingly review and correct the errors apparent on the face of the judgment as follows:
 - i. Paragraph 44(e) thereof is deleted and replaced with the following:
 - e. Underpayments



The Claimant was in the employment of the Respondent for 10 months. Under the Regulation of Wages (General) (Amendment) Order 2015, the Claimant was entitled to a consolidated salary of Kshs. 13,646.40 per month. From the Claimant's evidence he was paid an all-inclusive salary of Kshs 10,000. The Respondent did not controvert this evidence. The Claimant was thus underpaid by Kshs. 3,646.40 per month making a total of Kshs 36,464.00 for the 10 months he worked which I award him.

ii. Paragraph 45(b) is deleted and replaced with the following:

Underpayments Kshs. 36,464.40

12. Judgment is accordingly reviewed and amended.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 15TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

