



Emojong v Henkel Chemicals (EA) (Employment and Labour Relations Cause 1910 of 2017) [2025] KEELRC 2015 (KLR) (9 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2015 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1910 OF 2017**

HS WASILWA, J

JULY 9, 2025

BETWEEN

EUNICE ARAKIT EMOJONG CLAIMANT

AND

HENKEL CHEMICALS (EA) RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion dated 10th March 2025 seeking orders that: -
 1. Spent
 2. this Honourable Court do order stay of or any intended execution of the judgment delivered on 3.02.2025 and the consequential orders made with regards to the award of salary for July 2017 and pay in lieu of notice totalling to Kshs. 170,000 pending hearing and determination of this Application.
 3. this Honourable Court be pleased to review the judgment delivered on 3.02.2025 and the consequential orders made with regards to the award of salary for July 2017 and pay in lieu of notice totalling to Kshs. 170,000
 4. the Honourable Court be pleased to review its orders awarding the Claimant herein Kshs. 170,000 on the ground that the salary for the months of July 2017 and pay in lieu of notice were duly paid out to the Claimant on 21st August 2017 at the time of her separation with the Respondent/Applicant.
 5. in place of such orders, the Honourable Court be pleased to make a declaration that the Claimant is not entitled to any award under the head of salary for the month of July 2017 and pay in lieu of notice the same having been settled in full.



6. the Honourable Court be pleased to issue such further orders as it may deem fit in the interest of justice.
7. there be no orders for costs of this application.

Respondent/Applicant's Case

2. The Applicant avers that the Claimant filed this suit on 26th September 2017 seeking orders that the court finds his termination unfair, unprocedural and therefore unlawful. She also sought payment of terminal dues, general damages plus costs of the suit.
3. The Applicant avers that it produced in court the Payslip for July 2017, a cheque dated 21st August 2017 and a declaration voucher dated 24th August 2017 duly signed by the Claimant confirming receipt of her final settlement dues which includes pay in lieu of notice.
4. The Applicant avers that vide its judgment of 3rd February 2025, the court declared the termination of the Claimant's employment by the Respondent was unprocedural and unlawful and therefore unfair. It then proceeded to award the Claimant Kshs. 170,000 being salary for the months of July 2017 and pay in lieu of notice.
5. It is the Applicant's case that it is at risk of execution despite the fact that it has long settled the sums awarded to the Claimant at the time of their separation and as such he has no claim against the Respondent.
6. The Applicant avers that no appeal has been preferred against the judgment and that the application has been made without unreasonable or undue delay.
7. It is the Applicant's case that it has a good and sufficient cause for the review of the judgment with respect to the award of salary for the month of July 2017 and pay in lieu of notice.

Claimant/Respondent's Case

8. In opposition to the Application, the Claimant/Respondent filed a replying affidavit dated 5th May 2025.
9. The Respondent avers that did not receive any payments as alluded by the Applicant and that the Applicant has not availed any bank statements as evidence of the remittance of funds to the Respondent.
10. The Respondent avers that there is no sufficient reason to review the final Orders of this Honourable Court as they have failed to discharge their evidentiary burden of proof.
11. It is the Respondent's case that the application is defective, unmeritorious and it ought to be dismissed with costs to the Respondent.

Applicant's Submissions

12. The Applicant submitted that the legal threshold for review is provided in Rule 74(1) of the *Employment and Labour Relations Court Act* Procedure Rules which states:

“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.”
13. The Applicant submitted that the power of review is discretionary and unfettered as held in *Kenya Union of Hair and Beauty Salon Workers v Black Beauty Products Ltd; Kenya Scientific Research International & Technical Institutions Workers Union (Interested Party)* [2018] KEELRC 142 (KLR) which quoted the Court of Appeal in *Shanzu Investment Ltd v the Commissioner of Lands*, Civil Appeal No. 100 of 1993 [1993] eKLR, by stating:
- “The court has a wide discretion to set aside judgment and there are no limitations and restrictions on the discretion of the judge except if the judgment is varied, it must be done on terms that are just”.
14. It is the Applicant’s submission that there is sufficient reason to review the judgment and orders awarded to the Claimant for salary for the month of July 2017 and pay in lieu of notice as the same proof of payment was furnished to this court in the Respondent/Applicant’s list of documents dated 10th January 2018 and its further list of documents dated 15th January 2019 and its supporting affidavit for this application.
15. The Applicant urges the court to review the award for compensation in the judgment by adjusting the compensation amount to reflect the correct figure, excluding the sums that have already been paid to the Claimant being Kshs. 510,000 instead of Kshs. 680,000.

Claimant/Respondent’s Submissions

16. The Respondent submitted that the law on review of a court’s judgment is well settled as discussed in *Grace Akinyi v Gladys Kemunto Obiri and & another* [2016] eKLR, where the Court placed reliance in the case of *National Bank of Kenya v Ndungu Njau*, Civil Appeal No. 211 of 1996, and stated :
- “A review may be granted whenever the court considers that 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 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 preceded on an incorrect expansion of the law”.
17. The Respondent submitted that Section 80 of the *Civil Procedure Act* read alongside Order 45 of the Civil Procedure Rules provides the grounds for review as: where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order was made; where there is an error or some mistake apparent on the face of the record; and for any sufficient reason. This is reiterated under Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024.



18. The Respondent submitted that an error/ mistake apparent on the face of the record cannot be defined accurately. He relied on the Court of Appeal in *Nyamogo and Nyamogo Advocates v Kogo* [2001] EA 173 that defined an error apparent on the face of the record and held that:

“An error apparent on the face of the record cannot be defined precisely or 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 an 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.”

19. The Respondent submitted that the Applicant has not demonstrated any error or mistake that the Court made in reaching at its decision.

20. The Respondent submitted that the Applicant in its submissions has not revealed any new facts that were outside of its knowledge and which upon exercise of due diligence it could not have gotten them before the order was made.

21. It is the Respondent’s submission that the Respondent/Applicant has not met the legal threshold that warrants review of a judgment and order of the court. Therefore, the Respondent/Claimant are obligated to pay the sums due to the Claimant/Respondent.

22. I have examined the averments and submissions of the parties herein. The respondent/applicant seek review of this court’s judgment on the ground that the court awarded the claimant payment of her July 2017 which they aver they paid to the claimant as evidenced from the discharge summary and a signed voucher.

23. The respondents also seek to rely on a cheque No. 193032 and a discharge voucher (documents no 13 and 14) to prove payment.

24. I note that at document no 13 the claimant signed on the discharge voucher admitting receipt of kshs 155,112/- and included in the amount was 1 month salary in lieu of notice= kshs 85,000 and pay for days worked in August 2017. There is no indication that the claimant was paid for July 2017 as alluded in the application herein.

25. I therefore find the application to review my judgment in regard to payment of July 2017 is not merited. I however review my judgment and exclude for the total amount payable 1 months’ salary in lieu of notice. The total judgment sum is therefore reviewed less kshs 85,000/- being notice pay. The final judgment figure is now reviewed to be settled at kshs 595,000/-. The rest of the judgment remain the same.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

