



**Kinyua v The Catholic Diocese of Maralal (Thru' Registered Trustees) & another (Employment and Labour Relations Cause E044 of 2022) [2025] KEELRC 1989 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1989 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E044 OF 2022**

**AN MWAURE, J**

**JULY 4, 2025**

**BETWEEN**

**DAVID GICHINI KINYUA ..... CLAIMANT**

**AND**

**THE CATHOLIC DIOCESE OF MARALAL (THRU' REGISTERED TRUSTEES) ..... 1<sup>ST</sup> RESPONDENT**

**FR. STEVE LEKASUYAN THE ADMINISTRATOR CATHOLIC DIOCESE OF MARALAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The Claimant/Applicant filed a Notice of Motion dated 18<sup>th</sup> February 2025 under Certificate of Urgency seeking the following orders that:
  1. Spent
  2. This Honourable Court reviews paragraph 63 of the judgment dated 15.2.2024 to reflect unpaid salary calculated as Kshs. 45,000 X 9 months, amounting to Kshs. 405,000/=.
  3. This Honourable Court reviews paragraph 70 of the judgment dated 15<sup>th</sup> February 2024 to reflect that the total award to the Claimant is Kshs.2,221,350/=.
  4. Costs be in the cause.
2. The application is brought to be expressed under Article 159(2)(d) of *the Constitution*, sections 12, 16, 20, 22 of the *Employment and Labour Relations Court Act*, Rule 75 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and all enabling provisions of the law.



### **Claimant/Applicant's supporting affidavit**

3. The Claimant/Applicant avers that following a judgment issued on 15<sup>th</sup> February 2024, the court miscalculated the awarded salary arrears by using 7 months instead of the correct 9 months, resulting in a shortfall of Kshs.132,000/=.
4. Although the court allowed a correction application filed on 13 March 2024, which was unopposed, the Claimant/Applicant avers that the revised order did not specify the actual figures.
5. The Claimant/Applicant avers that the omission has prevented the Deputy Registrar from including the corrected amount in the decree.
6. The Claimant/Applicant now seeks this Honourable Court's intervention to formally include the accurate figures to ensure proper execution of the judgment, stating that the application is made in good faith and will not prejudice the Respondents.
7. Despite being served with the application; the Respondent did not file anything opposing the said application.

### **Analysis and determination**

8. The court has considered the application before it, and the issue for determination is whether the application is merited.
9. Section 16 of the *Employment and Labour Relations Court Act* provides that this Honourable Court has the power to review its own decisions, whether judgments, awards, orders, or decrees, as long as the process follows the established rules.
10. Rule 75 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:

“The Court shall, at the request of the parties or on its own motion, cause any clerical mistake, incidental error, or omission to be rectified and shall notify the parties of such rectification.”

11. In *Stephen Wanyoike Kinuthia (Suing on behalf of John Kinuthia Marega (deceased) V Kariuki Marega & Another [2018] KECA 623 (KLR)*, the Court of Appeal cited the case of *Muyodi V Industrial and Commercial Development Corporation & Another (2006) 1 EA 243*, which defined what constitutes a mistake or error on the face of the record as follows:

“In *Nyamogo & Nyamogo -vs- Kogo (2001) EA 174* this Court said 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 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 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 or wrong view is certainly, no ground for a review, although it may be for an appeal.”



12. Still in *Stephen Wanyoike Kinuthia (Suing on behalf of John Kinuthia Marega (deceased) V Kariuki Marega & another (Supra)*, the Court of Appeal cited a Tanzanian decision in the case of *Chandrakhant Joshibhai Patel V R (2004) TLR, 218*, where it was held that an error stated to be apparent on the face of the record:

“...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reading on points on which may be conceivably be two opinions”.

13. In *Gichana, The Clerk, Nairobi City County Assembly V Ngwele & 3 others [2022] KECA 423 (KLR)*, where the Court of Appeal stated as follows:

“The threshold for the exercise of that mandate is limited to a clerical or arithmetical mistake in any judgment of the court or any error arising therein from an accidental slip or omission. Our take on the interpretation of the above provision is that it arises where there is need to give effect to what the intention of the court was when the judgment or order was given. It also denotes a situation where the party allegedly affected, either as a party or interested party, must be one with a stake in the proceedings giving rise to the judgment or ruling sought to be corrected.”

14. In this instant case, the Claimant is seeking review of the judgment delivered on 15<sup>th</sup> February 2024 to reflect the unpaid salary calculated as Kshs.45,000 X 9 months, amounting to Kshs.405,000/= together with the total award to reflect as Kshs.2,221,350/=.

15. The court has perused and gone through the judgment and found out that the Claimant/Applicant’s salary was reduced, which was evident from the payslip, which the Respondent did not deny. In terms of calculation, it is the discretion of the court to award damages in any circumstances contemplated as set out in section 12(3)(vii) of the *Employment and Labour Relations Court Act*.

16. Having said so however, the court concedes that there was error made by the Honourable Court (Wasilla J) in calculating the said unpaid salary together with the total awards the months of reductions being January 2022 to September 2022 as well specified in Paragraph 61 of the Judgment. That would work out to 9 months whose total is Kshs.45,000 X 9 = 405,000/= instead of Kshs.273,000/=. The total due therefore on under payment be added at the shortfall of Kshs.405,000/= instead of the figure given by the trial Judge.

17. Flowing from the foregoing, the court finds that the application is merited and it is therefore allowed to reflect the above difference.

18. Each party will meet their costs of this application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 4<sup>TH</sup> DAY OF JULY, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They



have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

