



**Mochama v Kenya Nut Company Limited (Cause 2348 of 2017)
[2024] KEELRC 1990 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1990 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2348 OF 2017**

**JK GAKERI, J
JULY 30, 2024**

BETWEEN

NYABUTO MOCHAMA CLAIMANT

AND

KENYA NUT COMPANY LIMITED RESPONDENT

RULING

1. Before the Court for determination is the Claimant's Notice of Motion dated 19th June, 2024 filed under Certificate of Urgency seeking Order:-
 1. The judgment and/or Order of this Court made on 12th October, 2023 in this suit be reviewed and/or varied.
 2. The costs of this application be provided for.
2. The Application is expressed under Section 3, 4 and 12 of the *Employment and Labour Relations Court Act*, 2011 and Rule 17, 28 and 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* and is based on the grounds set out on its face and the Supporting Affidavit of Mr. Daniel O. Rakoro Advocate, sworn on 19th June, 2024 who deposes that although the court awarded the Claimant certain reliefs including one month's salary in lieu of notice and equivalent of 6 months' salary, the amount due was not tabulated and prays for a review of the judgement to insert the relevant amounts as follows;
 - a. One month's salary in lieu of notice Kshs 26,763.00
 - b. Equivalent of 6 months' salary Kshs 160,578.00.
3. The affiant deposes that the application was necessitated by the Respondent's refusal to respond to his letter on payment of the decretal sum.



4. That owing to the error or mistake, it is necessary that the judgment be reviewed and corrected.
5. Section 16 of the *Employment and Labour Relations Court Act*, 2011 read with Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016, confer upon the court statutory power to review its judgments, awards, orders or decrees in the circumstances provided for by the Rules.
6. Similarly, Rule 34 of the *Rules* confer on the court's jurisdiction to rectify clerical mistakes, incidental error or omission either on application by the parties or suo motu.
7. In the court's view, since the instant application is grounded on absence of figures, the same calls for rectification of the judgment as opposed to a review grounded on a mistake or error on the face of the record.
8. In the court's view, Rule 34 of the *Rules* is more relevant in this instance.
9. When the Notice of Motion came up on 9th July, 2024, the court directed the applicant to serve and the Respondent to respond within 14 days and despite service, the Respondent had not responded by 25th July, 2024 and was not present in court.
10. The Notice of Motion is thus unopposed and is accordingly granted as prayed as follows;
That paragraph 63 of the Court's Judgment delivered on 12th October, 2023 be rectified as follows;
 - a. Sub-paragraph(b) to read;
One month's salary in lieu of notice, Kshs 26,763.00.
 - a. Sub-paragraph (c) to read;
Equivalent of 6 months' salary Kshs 160,578.00.
11. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30TH DAY OF JULY 2024

DR. JACOB GAKERI

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 15th March 2020 and subsequent directions of 21st 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.

DR. JACOB GAKERI

JUDGE

