



Limo & another v Kenya Tea Packers Limited (KETEPA) (Cause 13 of 2019) [2024] KEELRC 2559 (KLR) (18 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2559 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 13 OF 2019
SC RUTTO, J
OCTOBER 18, 2024**

BETWEEN

TRISA JESANG LIMO 1ST CLAIMANT

GERTRUDE OGECHI OKEMWA 2ND CLAIMANT

AND

KENYA TEA PACKERS LIMITED (KETEPA) APPLICANT

RULING

1. *Vide* a Judgement delivered on 6th October 2023, this Court found in favour of the Claimants thereby awarding them the following reliefs;

1st Claimant

- a. Compensatory damages in the sum of ksh 311,271.00 being equivalent to 3 months of her gross salary.
- b. Transfer allowance in the sum of ksh 162,999.40.
- c. The total award is ksh 474,270.40.
- d. Interest on the amount in (c) at court rates from the date of Judgment until payment in full.

2nd Claimant

- a. Compensatory damages in the sum of ksh 311,271.00 being equivalent to 3 months of her gross salary.
- b. Transfer allowance in the sum of ksh 172,587.60.



- c. The total award is ksh 483,858.60.
 - d. Interest on the amount in (c) at court rates from the date of Judgment until payment in full.
2. Consequent to the Judgment of the Court, the Applicant filed the instant Application dated 31st May 2024, seeking the following orders: -
 - a. Spent
 - b. Spent
 - c. The Honourable Court be pleased to review and set aside portions of its judgment of 6th October 2023 in which it granted the Claimants reliefs regarding transfer disturbance allowances in the sums of ksh. 162,999.40/- and ksh. 172,587.60/- to the 1st and 2nd Claimants respectively.
 - d. The Honourable Court do issue such orders and give such directions as it may deem fit and just in the circumstances.
 - e. The costs of this Application be borne by the Claimants.
3. The Application is premised on the grounds appearing on its face and the Affidavit of Judy Kinyanjui, the Applicant's Head of Human Resource and Administration. Grounds in support of the Application are that, at the time of processing the decretal sum, the Applicant has, with certainty and upon discovery, established that the 1st and 2nd Claimants were paid their transfer allowances in the sums of ksh. 75,000/= and ksh. 70,000/= respectively at the times of transfers and separation. That any further compensation will amount to double compensation and unjust enrichment and that this is sufficient reason within the meaning of Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* upon which the court is urged to review the impugned portions of the judgment.
4. In response to the Application, Getrude Ogechi Okemwa, the 2nd Claimant swore a Replying Affidavit dated 13th June 2024, on her behalf and on behalf of the 1st Claimant. Ms. Ogechi deposes that the documents annexed to the Application have been well within the Applicant's disposal and knowledge hence does not qualify to be termed new evidence.
5. Ms. Ogechi further avers that the Applicant has in a clandestine manner introduced new evidence that was not before the court at the time of the proceedings. In her view, this is a case of negligence and not one of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Applicant's knowledge or reach. She contends that the Application is meant to delay their enjoyment of the fruits of a successful litigation.
6. That further, the Applicant lodged a Notice of Appeal dated 16th October 2023 indicating its dissatisfaction with the Court's Judgment. She avers that the intended appeal seemed to have been abandoned along the way hence the application herein is an afterthought, frivolous and vexatious. It is Ms. Ogechi's position that the Applicant all along had a formed mind of its dissatisfaction with the judgment and the inordinate delay of 8 months in preferring the review herein has not been explained.
7. Ms. Ogechi further contends that if the assertions on the purported payments made are true, the Applicant ought to have produced their evidence during trial to enable the Claimants cross-examine the Applicant on the same.



Analysis and Determination

8. The Court has considered the Application, the Response thereto and has identified the main issue for determination as being whether the Applicant has satisfied the requirements for the grant of an order for Review.
9. Rule 33(1) of the *Employment and Labour Relations Court (Procedure) Rules, 2016* (now revoked), is very explicit that the Court can only review its orders if the following grounds exist:-
 - a. if there is discovery of new and important matter or evidence which, after 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.
10. Through the instant Application, the Applicant has asked the Court to review and set aside portions of its Judgment in which it awarded the sum of ksh 162,999.40 and ksh 172,587.60 to the 1st and 2nd Claimants respectively, with respect to transfer allowances.
11. The basis of the Application by the Applicant is that it has ascertained that the Claimants were paid transfer allowances at the time of their respective transfers and separation.
12. In support of the Application, the Applicant annexed to its Supporting Affidavit, copies of payment vouchers indicating that the Claimants were indeed paid transfer allowances during their respective transfers to Nairobi.
13. In light of the foregoing and bearing in mind the provisions of the aforementioned Rule 33(1), I am satisfied that there is sufficient reason to cause review of the Court's decision with respect to the award on transfer allowances.
14. Notwithstanding the fact that the documents evidencing payment of the transfer allowances to the Claimants may have been within the Applicant's reach and for one reason or the other were not availed to the Court during the hearing, this Court has a duty to ensure justice to both parties and as such, cannot shut its eyes and ignore the said documentation.
15. This being the case, I cannot help but find that the Application has satisfied the threshold established under Rule 33(1) with respect to review.
16. Accordingly, and in the interest of justice, the Application dated May 31, 2024 is allowed and the Court's final orders in the judgment delivered on October 6, 2023, are hereby reviewed to exclude the award of transfer allowance in the sum of ksh 162,999.40 and ksh 172,587.60 to the 1st and the 2nd Claimants respectively.
17. The Applicant shall bear the costs of the instant Application as it failed to bring to the attention of the Court the existence of the documentation confirming payments at the time of the hearing, thus occasioning a review.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF OCTOBER 2024.

STELLA RUTTO

JUDGE



In the presence of:

Ms. Kirui for the Claimants/Respondents

Ms. Kioko for the Applicant/Respondent

Millicent Kibet Court Assistant

