



Nyandiago & 3 others v Sibbo Water & Sanitation Company Limited (Cause 57 of 2020) [2024] KEELRC 2856 (KLR) (20 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2856 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 57 OF 2020
NZIOKI WA MAKAU, J
NOVEMBER 20, 2024**

BETWEEN

**JULIUS JOMO BENJAMIN NYANDIAGO & 3 OTHERS & 3
OTHERS CLAIMANT**

AND

SIBBO WATER & SANITATION COMPANY LIMITED RESPONDENT

RULING

1. The application before the court is the one dated 20th September 2024 by the Claimants/Applicants. It is premised upon sections 13, 16 and 20 of the Employment and *Labour Relations Act* and the Employment and Labour Relations Court (Procedure) Rules 2016 – Rules 17, 33(1)(b), (d), 33(3) and 34 and other enabling provisions of the law, seeking the following orders:
 1. The Honourable Court be pleased to vary and/or review its judgment delivered on 21st June 20123 by substituting the Kshs. 198,000/- awarded to the 1st Claimant as payment in lieu of notice with Kshs. 390,000/- and that the total sum awarded to the 1st Claimant accordingly be adjusted to reflect the substitution.
 2. That costs of the application be in the cause.
2. The application was supported by the annexed affidavit of Mr. Simon G. Watithaka annexed to the motion as well as the grounds on the face of the motion.
3. The application was at the time of penning the Ruling, unopposed. Nevertheless, the Court has had to consider the merits of the same. The Applicants have misapprehended the import of the 2016 Rules. As of August 16th 2024, the Employment and Labour Relations Court (Procedure) Rules 2016 had been supplanted by the 2024 Rules. The Employment and Labour Relations Court (Procedure) Rules 2024 Gazetted as Kenya Gazette Supplement No. 161 under Special Issue and noted as Legislative Supplement No. 64 Legal Notice No. 133 of 16th August 2024, are the applicable rules of procedure



for this Court and any party handling claims under employment and labour relations law. As such, the correct and applicable rule on review is, Rule 74. The application will be handled as if there was reference to Rule 74 in relation to the review sought. For the benefit of the Applicants, Rule 74 provides as follows:-

74.

- (1) 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.
- (2) An application for review of a decree or order of the Court under sub-rule (1) shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station.
- (3) A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or ruling or order to be reviewed.
- (4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.
- (5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.
- (6) An order made for a review of a decree or order shall not be subject to further review.

4. The Court notes the subrule for the Applicant's motion would be subrules 74(1)(b), 74(2), (3) and (4). My reading of the Court record indicates that the contract of the 1st Claimant provided for a payment of a salary of Kshs. 66,000/- a month. The termination notice under the said contract was 3 month's written notice or payment of 3 month's salary in lieu of thereof. A simple arithmetical calculation is that the sum the 1st Claimant would be entitled to would be Kshs. 198,000/- as payment in lieu of notice. The decision my brother Radido J. rendered, dutifully considered the sum earned per month and the notice period under the said contract, hence the award the Learned Judge gave of Kshs. 198,000/- under the head of notice pay. There was no error on the face of the record nor any apparent in the judgment, as to require correction by way of review. The application lacks merit and thankfully for the Applicants, is unopposed so it can be dismissed with no order as to costs. Application dismissed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF NOVEMBER 2024

NZIOKI WA MAKAU, MCIARB.



JUDGE

