



Kaguthi & 11 others v Principal Secretary, Ministry of Interior & Coordination of National Government (PS Interior) & another (Petition E084 of 2020) [2023] KEELRC 1096 (KLR) (25 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 1096 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E084 OF 2020
NZIOKI WA MAKAU, J
APRIL 25, 2023

BETWEEN

JOSEPH KAGUTHI & 11 OTHERS PETITIONER

AND

THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT (PS INTERIOR) 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Petitioners/Applicants filed a Notice of Motion Application dated 5th December 2022 seeking to be heard for orders that this Honourable Court be pleased to review and correct the computation of the Judgment sums awarded to them in the Judgment delivered on 27th October 2022, whose computation has a mathematical error. They seek for the Judgment to be amended to cover their pay for the 14 months worked and 22 months underpayment in the sum of Kshs. 128,744,000/- instead of the indicated Kshs. 117,040,000/-, together with Gratuity for 36 months instead of the 22 months erroneously reflected in the aforesaid Judgment delivered. Further, that the Respondents be condemned to pay the costs of this application.
2. The Application is based on the grounds that the Honourable Court in error and/or inadvertent mistake, indicated that the Petitioners/Applicants were each entitled to Kshs. 11,704,000/- which works out to be Kshs. 117,040,000/-. That the Court in error awarded a less sum for the 11 Petitioners at Kshs. 1,000/- for each Petitioner totalling Kshs. 10,000/- instead of Kshs. 11,000/-. In addition, that the Petitioners had served for 36 months in respect of which gratuity accrued, and not 22 months as indicated. It is the Applicants’ assertion that the Orders being sought are fair and just.



3. The Application is supported by an affidavit sworn by the 2nd Petitioner/Applicant who reiterates that the aforesaid Judgment inter alia provided for underpayment of the 2nd to 11th Petitioners in the sum of Kshs. 11,704,000/- each malting a total sum of Kshs. 117,040,000/- instead of Kshs. 128,744,000/-. That the Court also awarded each Petitioner damages in the sum of Kshs. 1,000/- as a token award for the infringement of their Constitutional rights, making a total of Kshs. 10,000/- instead of Kshs. 11,000/-. That the Judgment further stated that gratuity was to be paid at the rate of 31% of the gross salary for the 22 months instead of 36 months of service and was to be calculated by the 1st Respondent and paid within 30 days of the Judgment respectively. He avers that the amounts payable to the Petitioners from the Judgment is in the sum of Kshs. 203,016,000/- cumulatively inclusive of gratuity, which calculations he sets out in his affidavit.
4. In response, the Respondents filed a Preliminary Objection dated 3rd March 2023 on the ground that the Petitioners' Application dated 5th December 2022 does not meet the threshold for review as set out under rule 33(1) of the *Employment and Labour Relations Court Act* Procedure Rules. That the Petitioners/Applicants' allegation that there was an error or inadvertent mistake in the judgment in calculating their total pay is misplaced and not realistic. That the Applicants have not demonstrated any new evidence they wish to rely on in support of their application and the grounds therein. Furthermore, that although the Respondents have lodged a Notice of Appeal in the Court of Appeal and are in the process of lodging an application for stay, they oppose the Petitioners' Application herein for lack of basis, merit and clarity. The Respondents further assert that the Petitioners' Application is defective, bad in law and incompetent and should be dismissed henceforth.
5. The Applicants submit that the subject application has been filed under the provisions of section 12 of the *Employment and Labour Relations Court Act* and the rules thereto and is therefore well founded in law. They cite Rule 33(1) of the *Employment and Labour Relations Court Act* Procedure Rules which provides as follows:
 33.
 - (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 a 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; or
 - (b) on account of some mistake or error apparent on the face of the record; or
 - (c) on account of the award, Judgment or ruling being in breach of any written law; or
 - d. if the award, the Judgment or ruling requires clarification; or
 - (e) for any other sufficient reasons.
6. They further submit that their Application is premised on the mathematical errors in the final orders of the Judgment and that consequently, review is well founded and should be allowed in order to correct the mathematical errors in the sums awarded. In support of the Application, the Applicants refer to the case of *Victoria Mukonyo v Jamii Bora (K) Ltd* [2014] eKLR in which the Court reviewed its decision and replaced the sum that had an error and the case of *John Ng'ang'a Kuria v Kenya Broadcasting Corporation* [2015] eKLR in which the Court reviewed its judgment based on the errors on record.



Respondents' Submissions

7. The Respondents submits that from the Applicant's pleadings, it appears reliance is put under Rule 33(1)(b) of the Court's Procedure Rules. That however, the application for review has no basis because it is not clear why and how the Applicants arrive at a figure of eleven (11) Respondents which is not in the Judgment, unless they are appealing against the Judgment. Secondly, the Court granting gratuity for 22 months against the Petitioners/Applicants' wish of 36 months is not an error apparent on the face of the records to warrant review, but can only be altered upon a successful appeal. Thirdly, the Judgment does not indicate that the token of Kshs. 1,000/- hence a total sum of Kshs. 10,000/- was awarded to each Petitioner but it instead remains silent on the number of Petitioners to benefit from the token and therefore remains a blanket or general award to the Petitioners. It is the Respondents' submission that the prayer to amend the token award can only be altered upon appeal and not on review.
8. The Respondents submit that the Applicants are attempting to alter the content of the entire judgment through review process and this Court should decline the same. That the Petitioners/Applicants should take advantage of the appeal process if they are dissatisfied with the said Judgment of this Honourable Court. They further submit that their Preliminary Objection should be allowed and the Petitioner's Application struck out with costs to the Respondent.
9. The Court determined the matter on 27th October 2022. There is said to be an appeal against the decision. A review is permitted where the following conditions are met:
 - (b) on account of some mistake or error apparent on the face of the record; or
 - ...
 - d. if the award, the Judgment or ruling requires clarification; or
 - (e) for any other sufficient reasons.
10. Section 99 of the *Civil Procedure Act* can be invoked to correct clerical or arithmetical mistake in judgments, decrees or orders, or errors arising therein from an accidental slip or omission. The provision allows a Court to either evoke the provisions of this section on its own motion or on application. In this case, the Petitioners have made the application seeking this correction of the accidental slip by the Court. In totalling the sums due to the 11 Petitioners who were successful, the Court made a mathematical error in calculation. The sum awarded to each successful Petitioner was Kshs. 11,704,000/- making a total of Kshs. 128,744,000/-. Instead, the Court calculated the sum by multiplying the award by 10 instead of 11. There was also an award being a sum of Kshs. 1,000/- token for infringement of their rights. The Court used the same factor and made an error in computation. The sum was Kshs. 1,000/- each for the successful Petitioners making a total of Kshs. 11,000/- and not the Kshs. 10,000/- that appeared on paragraph 19(b) of the decision. As such the Court corrects the said amount in paragraph 19(a) to read 128,744,000/- under the slip rule as well as the Kshs. 11,000/- for paragraph 19(b). As the error was by the Court, each party will bear their own costs for the application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF APRIL 2023

NZIOKI WA MAKAU

JUDGE

