



**Munyinyi v Toyota Kenya Limited (Cause 315 of 2019)
[2023] KEELRC 1139 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1139 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 315 OF 2019**

**L NDOLO, J
MAY 11, 2023**

BETWEEN

ABIGAEL MUNYINYI CLAIMANT

AND

TOYOTA KENYA LIMITED RESPONDENT

RULING

1. On March 2, 2023, I delivered judgment in favour of the claimant in the sum of Kshs 6, 240,000 being twelve (12) months' salary in compensation for unlawful dismissal plus one (1) month's salary in lieu of notice.
2. The respondent subsequently moved the court by way of notice of motion dated March 15, 2023, seeking orders to review, vacate and/or set aside the judgment.
3. The motion is supported by an affidavit sworn by the respondent's Counsel, George Wandati and is based on the following grounds:
 - a. That on March 2, 2023, the Court delivered judgment allowing the Claimant's claim in the sum of Kshs 6,240,000 plus costs of the suit;
 - b. That at paragraph 4 of the judgment, the Court erroneously held that the by the rime of writing the judgment, only the Claimant had filed final written submissions;
 - c. That the correct position is that on February 13, 2023, the Respondent filed and served its written submissions upon the Claimant's Advocates pursuant to leave of 14 days which the Court had granted to the Respondent on February 7, 2023, to file its written submissions;
 - d. That it is therefore evident that the Court did not take into consideration critical issues of fact and law, which were raised in the Respondent's written submissions when delivering its judgment, which if considered could possibly have convinced the Court to reach a different



conclusion; or mitigate the quantum of damages awarded, even if the Court would still have reached the same decision it did;

- e. That the failure to consider the Respondent's submissions, which were properly on record, prior to delivery of the judgment on the erroneous basis that only the Claimant had filed her submissions constitutes an error apparent on the face of the record; and equally, it constitutes a sufficient reason to warrant and justify a review of the judgment by this Court;
 - f. That the failure to consider the Respondent's submissions, which were properly on record, prior to delivery of the judgment compromised the Respondent's right to a fair hearing pursuant to article 50(1) of the *Constitution*;
 - g. That the instant application has been brought without undue delay;
 - h. That this Court has the power and discretion to grant the orders sought in the application;
 - i. That the Claimant will not suffer any prejudice if the Court reviews the judgment and considers the Respondent's written submissions;
 - j. That it is only fair, just and in the interest of justice that the application be allowed.
4. The Claimant opposes the Motion by her replying affidavit sworn on March 22, 2023.
 5. The Claimant terms the Respondent's application as fatally defective and an abuse of the court process.
 6. She states that failure by the Respondent to file its submissions on time cannot be visited on her or the Court. She takes the view that failure to consider the Respondent's submissions does not warrant revision of the judgment delivered on March 2, 2023.
 7. The Claimant points out that the matter had come up twice for mention, to confirm filing of submissions by the Respondent, on which occasions the Respondent did not confirm filing or service of its submissions.
 8. The Claimant states that the Respondent has not met the threshold for seeking review of judgment. She notes that the Respondent has not met the conditions set in rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*.
 9. The power of the Court to review its own decisions is donated by Section 16 of the *Employment and Labour Relations Court Act* and rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*. Rule 33(1) of the Procedure Rules provides as follows:
 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 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. if the judgment or ruling requires clarification; or
 - d. for any other sufficient reason.



10. The Respondent's application is premised on an alleged omission by the Court to consider its written submissions, which according to the Respondent, were properly on record. On this ground, the Respondent asks the Court to set aside its judgment and render itself afresh.
11. In my view, the purpose of review is not to grant the trial court another chance to reconsider the merits of the case. Rather, it is an opportunity to correct obvious mistakes, without interfering with the substance of the decision.
12. As held in *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR; *Nyamogo and Nyamogo Advocates v Moses Kipkolum Kogo* [2001] 1 EA 173; and *Richard Francis Malelu v Odhiambo Asber & another* [2020] eKLR an error on the face of the record is one that is self-evident and does not require an elaborate argument.
13. By its application, the Respondent in effect asks this Court to reopen a case on which a judgment has been delivered. If the Court was wrong in its judgment, the proper thing to do is to appeal the judgment.
14. That said, I find and hold that the respondent's application dated March 15, 2023 does not meet the threshold for review.
15. The application is therefore disallowed with costs to the claimant.
16. The interim orders granted on March 16, 2023 are vacated.
17. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF MAY, 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Ogutu for the Claimant

Mr. Wandati for the Respondent

