



REPUBLIC OF KENYA



KENYA LAW
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Sielei v Afya Co-operative Savings & Credit Society Limited (Cause E743 of 2019) [2023] KEELRC 1416 (KLR) (3 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1416 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E743 OF 2019
NZIOKI WA MAKAU, J
MAY 3, 2023

BETWEEN

JOSEPH KIPKEMOI SIELEI CLAIMANT

AND

AFYA CO-OPERATIVE SAVINGS & CREDIT SOCIETY LIMITED RESPONDENT

RULING

1. The Claimant/Applicant seeks review of the decision of the Court given on 20th April 2022. The Claimant asserts that the Court applied the sum of 92,140/- as the factor in computing the award instead of Kshs. 220,280/-. The Claimant asserts that using this sum, his award should be enhanced to Kshs. 2,643,360/-. The Claimant submits that there was a manifest error on the face of the record which must be remedied on review. The Claimant cites the case of *Postal Corporation of Kenya v Andrew K. Tanui [2019]* eKLR and urges the Court to review its decision accordingly. The Claimant also submits that the judgment failed to award him notice pay which the Court should grant in the sum of Kshs. 220,280/-.
2. The Respondent opposed the application for review vide grounds of opposition dated 15th September 2022. It asserts that the application does not meet the requirements of the law as relates to review of judgment. The Respondent submits that the Claimant has hinged his motion on Rule 33(b) which provides for review on account of some mistake or error apparent on the face of the record but has failed to demonstrate the same. The Respondent asserts that is a matter that requires hearing and a determination made on the merits. It submits that as such, the Claimant is inviting the Court to reopen the matter which it has already pronounced itself. The Respondent cites the case of *Menginya Salim Murgani v Kenya Revenue Authority [2014]* eKLR in support of this argument. The Respondent submits that what constitutes an error apparent on the face of the record is not what requires a long drawn process of reasoning on points where there may be conceivably be two opinions. The Respondent cites the case of *Nyamongo & Nyamongo v Kogo [2001]* EA 174 in support. It submits the



Claimant should accept that all litigation must come to an end and not abuse the court system in a bid to obtain a higher award. It submits the issue he raises is one that should have been raised through an Appeal.

3. The Claimant was successful in his claim before the Court. In his claim, he averred at paragraph 3 thereof that he earned a basic salary of Kshs. 92,140/- and a house allowance of Kshs. 46,100/-. The sum the Court should have used to compute is Kshs. 138,240/- and as such the total compensation should have been Kshs. 1,658,880/-. The Claimant is therefore entitled to an award of Kshs. 553,200/- in addition to the sum awarded as there is an error apparent on the face of the record. The matter of notice pay is for the Court of Appeal and not this Court and since the Claimant has sought review he has shut the door to this avenue of redress. As the error was by the Court in computing the amount due, each party will bear their own costs for the motion.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF MAY 2023

Nzioki wa Makau

JUDGE

