



**Kenya Hotels and Allied Workers Union v Green View Guest House & another
(Cause E002 of 2022) [2023] KEELRC 1501 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1501 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E002 OF 2022
CN BAARI, J
JUNE 22, 2023**

BETWEEN

KENYA HOTELS AND ALLIED WORKERS UNION CLAIMANT

AND

GREEN VIEW GUEST HOUSE 1ST RESPONDENT

JOSHUA OKOTH MIGIRE 2ND RESPONDENT

RULING

1. Before Court is the Claimant/Applicant's motion application dated January 2, 2023 and filed in Court on January 6, 2023, brought pursuant to rule 33(1) of the *Employment and Labour Relations Court (Procedure) Rules*. The Applicant seeks that the Court reviews part of the judgment delivered on December 8, 2022, and that the costs of the application be provided for.
2. The application is supported by grounds on the face of the motion and the affidavit of Mr. Chadwick Oloti Ng'ono, sworn on January 3, 2023.
3. The Applicant avers that the Court in its judgment of December 8, 2022, failed to award part of the reliefs sought on the basis that they were not proved.
4. The Applicant avers that when it filed its memorandum of claim, it attached the general wage guideline in support of its claim for salary under payment. It is the Applicant's position that the general wage order was not captured and hence the failure by the Court to consider in making the award.
5. The Applicant seeks that the Court reviews its judgment and make awards in the amount of Kshs. 502,794.00, on account of pending leave, public holidays, off days and a service gratuity.
6. The Respondent did not reply to the motion.



Determination

7. I have considered the application, the grounds and affidavit in support and the Applicant's written submissions. The issue for determination is whether the Applicant has established grounds for review of the judgment of this Court rendered on 8th December, 2022.
8. Section 16 of the *Employment and Labour Relations Court Act*, empowers this court to review its judgments, awards, orders or decrees in accordance with the *Employment and Labour Relations Court (Procedure) Rules*, 2016.
9. Further, rule 33 (1) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016, provides as follows on review:
 - “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;
 - (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. The Applicant's application for review is premised on the assertion that the Court did not consider the general wage guideline produced by the Applicant in evidence, hence the award made.
11. In *National Bank of Kenya Ltd vs Ndungu Njau* (1997) eKLR the Court stated:
 - “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.....”
12. The court in paragraphs 22, 23 and 24 of the judgment has addressed the issues relating to the claimant/applicant's prayers for awards on account of leave, salary under payment, public holidays, off days and a service gratuity.
13. Looking at the items on account of which the judgment is sought to be reviewed, the issues therein are neither errors nor omissions on the part of the Court as to meet the threshold for grant of review orders. The issues, instead, are matters that can only be addressed before an Appellate Court, as to do so herein, would amount to this Court sitting on appeal in its own judgment.
14. In *Joseph Kipkemboi Tanui v Chief Defence Forces & 2 others* [2020] eKLR, it was held that an appeal lies for an error of judgment, while an error apparent on the face of the record is the subject for review.
15. In conclusion, I find and hold that the applicant's application does not meet the threshold for grant of review orders, and is hereby dismissed.
16. The Respondents did not oppose the application; hence I make no orders on costs.



17. Orders of the court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 22ND
DAY OF JUNE, 2023.**

C. N. BAARI

JUDGE

Appearance:

Mr. Ngame present for the Claimant/Applicant

N/A for the Respondents

Ms. Christine Omolo-C/A

