



**Rapondi v Bagda's Auto Spares Ltd (Cause 588 of 2017)
[2023] KEELRC 1797 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1797 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 588 OF 2017
AN MWAURE, J
JULY 25, 2023**

BETWEEN

KELVIN OTIENO RAPONDI CLAIMANT

AND

BAGDA'S AUTO SPARES LTD RESPONDENT

RULING

1. The applicant respondent vide his application dated December 13, 2022 seeks the following:
 1. That this honourable court be pleased to review or vary its judgment delivered on November 24, 2022.
 2. That the honourable court do review the salary payable per month as per the pay slip being the consolidated pay of kshs 25,000.00 instead of kshs 30,000.00 used in the calculation of compensation and or the court does issue such orders and direction as it may deemed fit and just.
 3. That the cost of this application be borne by the respondent.
2. The applicant wants the court to review its judgment delivered on November 24, 2022 whereby it found that the claimant/applicant had been unfairly terminated and was awarded kshs 240,000/- as compensation.
3. He avers that claimant's salary was kshs 25,000/- and court had worked with a figure of kshs 30,000/-.
4. He says there is an apparent error on record and so he prays the application be granted.
5. The application is supported by the affidavit deponed by Tushar Bagda the respondent's Managing Director. She says the claimants consolidated salary as per his pay slip was ksh 25,000/-.



6. The claimant/respondent opposed the application by their grounds of opposition dated February 9, 2023. They say the claimant claimed for salary of kshs 40,000/- but court awarded at kshs 30,000/-. He further avers the application is not brought in good fact.
7. Further in their submissions of March 3, 2023 they affirm that the judgment should not be reviewed as the salary that was to be paid to the claimant was not constant and the court judicially settled on the salary of March 2016 of kshs 30,000/-.
8. The applicant submissions dated March 3, 2023 were considered by the court.

Determination

9. Rule 33(1)(d) of *Employment and Labour Relations (Procedure) Rules* provide that:
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—
(d) For any other sufficient reason
10. The court is usually mandated to use the pleadings and support documents and submissions of the respective parties while making a determination in a case.
It is prudent if the pleadings and exhibits are clear and accurate. That makes the work of the court easy.
11. In this case while writing the judgment of 24th November 2022 the court was guided by the pleadings and exhibits produced by the parties. The claimant's payslips were a useful guide in determining the award. The respondent did not deny the payslips originated from their organisation.
12. Going by the various payslips the claimants' salary differed from month to month. To give an example the salary for June 2016 was Kshs 40,000/- and back in March 2015 it was 49,000/-. In February 2015 it was 31,800 and in March 2016 it was 30,000.
13. Claimant was terminated around July 2016 and so indeed his salary should have been regarded to be kshs 40,000/-. The records do not lie and each month the figures which included allowance were referred as gross pay. That is therefore what the court worked with.
14. It is not like the court made an error that needed to be corrected in awarding the 30,000/- but made a discretionary choice to take an average figure since the claimant salary kept changing from month to month. In fact the court could have based its award on the June 2016 salary of Kshs 40,000 but took an average amount of kshs 30,000/-.
15. The court therefore does not find this is a case that merits review of the court's judgment as it does not satisfy the requirements of section 33 (1) of employment & labour relations court procedure rules. The application is not merited and is dismissed. Costs are awarded to the claimant

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 25TH DAY OF JULY, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

