



**Kenya Petroleum Oil Workers Union v Bach Enworld Holdings Limited
(Cause E017 of 2020) [2023] KEELRC 1785 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1785 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E017 OF 2020
CN BAARI, J
JULY 20, 2023**

**BETWEEN
KENYA PETROLEUM OIL WORKERS UNION APPLICANT
AND
BACH ENWORLD HOLDINGS LIMITED RESPONDENT**

RULING

1. Beforecourt is the applicant’s motion application dated April 25, 2023, and filed incourt onMay 3, 2023, brought pursuant to Rule 33(1) of the [Employment and Labour Relations Court \(Procedure\) Rules](#). The Applicant seeks that the Court reviews an error in the judgment and consequent decree issued on March 2, 2023, and award the grievant a salary underpayment of Kshs. 35,854/- instead of that of Kshs. 5,368.30/- awarded in that judgment.
2. The Applicant further seeks that the taxation of party and party costs scheduled for May 3, 2023be temporarily stopped until the application herein is determined.
3. The application is supported by grounds on the face of the motion and the affidavit of George Okoth Omollo, sworn on April 28, 2023.
4. The applicant avers that thecourt in its judgment ofMarch 2, 2023entered in favour of the applicant, awarded the applicant a total of Kshs. 44,368.30/- and costs of the suit.
5. That among the reliefs awarded was a salary underpayment for 14 months which was assessed at Kshs. 5,368.30/-. It is the applicant’s assertion that the courterroneously indicated that the grievant’s pay was supposed to be Kshs. 15383.45/- as a service worker in the petroleum sector, instead of Kshs. 17,561.00/- indicated in the Regulation of Wages order for 2018.
6. That the error affects the total sum awarded under the claim which should have been a total of Kshs. 35,854/- being an underpayment of Kshs. 2,561 per month for the 14 months.



7. The Applicant urged the motion orally on July 4, 2023, reiterating its pleadings.
8. The Applicant prays that the Court reviews its judgment and make an award in the sum of Kshs. 35,854/-, on account of salary underpayment.
9. The Respondent did not oppose the application.

Determination

10. I have considered the application, the grounds and affidavit in support and the Applicant's oral submissions. The issue for determination is whether the Applicant has established grounds for review of the judgment of this Court rendered on 2nd March, 2023.
11. 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.
12. 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.”
13. The applicant's motion is premised on the assertion that the court did not consider the correct section of the Regulation of Wages Order of 2018, and hence the error in the assessment of the amount in underpayment payable to the grievant.
14. A look at column 5 of the *Regulation of Wages Order* for the year 2018, indeed indicates the monthly salary for workers in the petrol and service stations as Kshs. 17561.00 and not that earlier awarded which is given in column 4 of the Order of Kshs. 15,383.45.
15. In *National Bank of Kenya Ltd v 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.....”
16. The grievant's monthly salary having been Kshs. 15,000/- thus shows that he was underpaid by Kshs. 2,561 per month, which amounts to an underpayment of Kshs. 35,854/- in the 14 months he was in the service of the respondent, and which is hereby awarded.



17. In conclusion, I find and hold that the Applicant's application meets the threshold for grant of review orders, and paragraph 57 (v) of the Judgment of this court delivered on March 2, 2023, is amended as follows:

(v) Salary underpayment of Kshs. 35,854/- instead of Kshs. 5,368.30.

18. The prayer to stay the taxation of the party and party bill of costs is overtaken by events in view of the date the taxation was to take place (3/5/2023).

19. Orders of the Court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 20TH DAY OF JULY, 2023.

C. N. BAARI

JUDGE

Appearance:

N/A for the Applicant

Mr. for the Respondent

Ms. Christine Omolo-C/A

