



**Kara v Medanta Africare Limited (Cause 11 of 2019)  
[2023] KEELRC 1625 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1625 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 11 OF 2019  
CN BAARI, J  
JULY 6, 2023**

**BETWEEN**

**NAQEEB IMTIAZ KARA ..... CLAIMANT**

**AND**

**MEDANTA AFRICARE LIMITED ..... RESPONDENT**

**RULING**

1. Before Court is the Claimant/Applicant's motion dated April 18, 2023, and filed in Court on April 19, 2023, brought pursuant to Section 80 of the Civil Procedure Act and order 45 Rule 1 and order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks orders that:
  - i. The Honourable Court reviews, varies or sets aside her Judgment delivered on January 19, 2023, together with all consequential orders.
  - ii. The Honourable Court be pleased to award the Applicant the sum of Kshs 3,800,000/- plus interest at court's rate from February 6, 2019.
  - iii. The costs of the application be provided for.
2. The application is supported by grounds on the face and the affidavit of Naqeeb Imtiaz Kara sworn on April 13, 2023. The Applicant avers that the judgment delivered by the Court allowed the Claimant/Applicant's claim for payment of terminal dues, and further admitted that evidence showed that the Claimant was unfairly terminated hence entitling him to payment of compensation.
3. The Applicant avers that the Court's failure to award the Applicant the Kshs 3,800,000/- claimed, was on account of innocent mistake; an error apparent on the face of the record or an oversight on the part of the Judge.



4. It is the Applicant's assertion that the Court is clothed with jurisdiction to issue directions, including that the Applicant/Claimant be compensated per his memorandum of claim. It is his position that it is only fair that his application is allowed.
5. The Respondent opposed the motion through a replying affidavit sworn by Osman Ganatra on May 19, 2023. The Respondent contends that the motion is an afterthought and an abuse of the Court process, for reason that the Claimant was already paid the decretal sum and the auctioneers fees.
6. It is the Respondent's position that this court became functus officio upon rendering the judgment sought to be reviewed, and has no jurisdiction to handle the instant application.
7. The Respondent further avers that the court did not make any mistake or error to warrant the review of the judgment. It is their assertion that the court awarded the Applicant two months' salary as compensation and which award is within the court's jurisdiction.
8. Parties' urged the motion orally on June 21, 2023, wherein, Counsels reiterated their pleadings.

### **Determination**

9. I have considered the application, the grounds and affidavit in support and the Respondent's replying affidavit opposing the motion. The issue for determination is whether the Applicant has established grounds for review of the Judgment of this Court rendered on January 19, 2023.
10. 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*.
11. Rule 33 (1) of the *Employment and Labour Relations Court (Procedure) Rules, 2016*, provides for review in the following words:

“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.”
12. The Applicant's motion is premised on the assertion that the Court did not award him full compensation for unfair termination even after proving that he was unfairly terminated.
13. 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.....”



14. This Court in its judgment awarded the Claimant/Applicant two months' salary as compensation for unfair termination. It is this particular award that the Claimant seeks that the Court reviews and/or sets aside, and instead, grant him an award of 12 months' salary for the unfair termination.
15. The question is whether this is a relief that lies in an application for review. In *Joseph Kipkemboi Tanui v Chief Defence Forces & 2 others* [2020] eKLR, the Court 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.
16. Section 49(1) and (c) provides thus in respect of compensation: -

“Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following –

The equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.”
17. Going by this provision, the amount awardable in compensation for unfair termination ranges between one to twelve months salary. It is thus wholly in the discretion of the Court to award as it deems justified.
18. Further, under paragraph 38 of the Judgment sought to be reviewed, the Court gave reasons for the award of two months salary and not 12 months, and to review this award, will amount to this court sitting on appeal in its own judgment.
19. 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 with costs.
20. Orders of the Court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

N/A Present for the Claimant/Applicant

Mr. Ruiru present for the Respondent

Christine Omollo- C/A

