



**Maina v Brava Food Industries Limited (Cause 655 of 2018)
[2023] KEELRC 1933 (KLR) (4 August 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1933 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 655 OF 2018
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

OWEN MACHARIA MAINA CLAIMANT

AND

BRAVA FOOD INDUSTRIES LIMITED RESPONDENT

RULING

1. The Court delivered judgment on 16.02.2023. The Court found that the respondent had failed to establish the valid reason for terminating the contract of service on account of redundancy. The Court upheld the computation by the respondent fixing the redundancy and other dues at Kshs.957,099.83. The Court also found that the claimant desired to continue in employment, he had served for only one complete year and the respondent's mitigating factor was that ex-gratia payment of 2 months was awarded at Kshs.320,000.00. The Court stated thus, "In this case, the court considers that only two months' salaries in compensation will meet ends of justice making Kshs.160,000.00 x 2 = Kshs.320,000.00. The total then is at Kshs.1,277,099.83. The claimant testified that on 17.04.2018 he received Kshs.300,000 at the bank account and then on 10.07.2018 he received Kshs.392,000.00 making a total of Kshs.692,000.00. The net pay due to the claimant was therefore Kshs.585,099.83 (less PAYE)"
2. The respondent has filed an application dated 29.03.2023 through Hassan N. Lakicha & Company Advocates. It is brought under sections 1A, 1B, 3A and 80 of the *Civil Procedure Act* & Order 45 Rule 1 of the *Civil Procedure Rules* 2010, Rule 33(1) of the *Employment and Labour Relations Court Act* Article 159(2) (d) of *the Constitution* and all other enabling provisions of law. It is prayed that the Honourable Court be pleased to review its judgment delivered on 16.02.2023; and, the costs of the application be provided for. The application was based upon the annexed affidavit of Ursula Kevogo, Human Resource Administration Manager of the respondent's company, sworn on 29.03.2023 and upon the following grounds:



- a. That this honourable court delivered judgment on 16.02.2023, where it held that:
 - i. The declaration the termination on account of redundancy was wrongful and unfair.
 - ii. The respondent to pay the claimant a sum of Kenya Shillings 585,099.83 less (PAYE) by 1st April, 2023 failing interest at court rate be payable thereon from the date of this judgment till full payment.
 - iii. The respondent to pay 50% claimant's costs of the suit.
- b. That upon perusal of the said judgment the respondent found that the Court had awarded the claimant a sum of Kenya shillings five hundred and eighty five thousand and ninety nine (Kshs 585,099.83/-) based on an erroneous calculation of gross amount and the net paid to the claimant.
- c. That on page 8 of the judgment the court considered only two months salaries in compensation which was a sum of Kenya shillings three hundred and twenty thousand (Kshs. 320,000/-).
- d. That the claimant had already been paid by the respondent a total sum of Kenya shillings six hundred and ninety two thousands (Kshs.692,000/=).
- e. That the mistake or error apparent on the face of record was that:
 - i. The court awarded two months gross payment of $160,000 \times 2 = 320,000$
 - ii. The court upheld the original gross amount as calculated was 957,099.83
 - iii. Then the court award of 320,000 and gross $957,099.83 + 320,000 = 1,277,099.83$ as correctly recorded on the judgment
 - iv. The Error was gross amount was used to deduct the net amount paid $1,277,099.83 - 692,000 = 585,099.83$
Instead of
 - v. Gross pay – Less PAYE, NSSF, NHIF (using current statutory calculations)
 - vi. $1,277,099.83 - 377,714.30 = 899,385.53$
 $899,385.53 - 692,000 = 207,385.50$
- f. That the court to get the sum of a sum of Kenya shillings five hundred and eighty five thousand and ninety nine (Kshs 585,099.83/=) erroneously used the GROSS amount of Kenya shillings one million two hundred and seventy seven thousand and ninety nine (Kshs.1,277,099.83/=) and deducted the net pay of Kenya shillings six hundred and ninety two thousands (Kshs.692,000/=) instead of obtaining the net pay of the sum of Kenya shillings one million two hundred and seventy seven thousand and ninety nine (Kshs 1,277,099.83/=).
- g. That the amount to be paid to the claimant is a sum of Kenya shillings two hundred and seven thousand three hundred and eighty-five, fifty cents (Kshs. 207,385.50/=).
- h. That if the respondents are to pay a sum of Kenya shillings five hundred and eighty five thousand and ninety nine Kshs 585,099.83/=) less payee as awarded in the judgment the claimant will receive more than awarded by the court which will be prejudicial to the respondent.
- i. That there is thus a mistake or error apparent on the face of the record.



- j. That there are mathematical errors on the face of court record and there are sufficient grounds for the court to review its judgment delivered on 16th February, 2023.
 - k. That the decree in relation to the review application was obtained on 23rd march, 2023 and the claimant has already issued a demand notice =.
 - l. That this honourable court directed that the respondent to pay the claimant a sum of Kenya shillings five hundred and eight five thousand and ninety-nine (Kshs.585099.83/=) by 1st April, 2023 failing interest at court rate be payable thereon from the date of this judgment till full payment thus it is for the interest of justice this court to issue a stay of execution.
 - m. That the respondent is ready and willing to a bid with courts directions in relation to security.
 - n. That the application has been brought with good faith and without undue delay.
 - o. That it is only just and fair that the orders sought herein be granted and this honourable court do review its decree/judgment in the interest of justice and fair administration.
3. The claimant opposed the application by filing a Grounds of opposition dated 17.07.2023 through Wokabi Mathenge and Company Advocate. Upon the following grounds:
- a. The application is commenced based on a misapplication of the law and the court is incapable of reviewing its own judgment on the basis it relied on a wrong computation or compensation.
 - b. The court having pronounced itself and if at all the respondent is/was dissatisfied with the decision it ought to have appealed.
 - c. The court made a finding upon hearing the rival parties' cases and it cannot be faulted for making its conclusion based on the evidence adduced.
 - d. The respondent ought to have appealed against the decision of the court and not apply for review of factual findings that no error apparent in law can be deduced.
 - e. The respondent's computation that the amount awarded should have been less NSSF and NHIF using the current statutory amount is erroneous and misleading. The court correctly held the amount to be deducted was only PAYE and had the respondent been aggrieved it ought to have appealed.
 - f. The respondent has put up a spirited fight not only deny the claimant his fair share of compensation but also fails to be humane after having discharged him from employment. The court is asked to decline the request for review.
 - g. There was no mathematical error the court made and the question of deduction of is NHIF and NSSF is only introduced belatedly being a factual issue that ought to have been raised at trial.
 - h. The application is frivolous, vexatious and an abuse of the court process only amenable to dismissal without costs to the claimant who is looking forward to enjoying the fruits of successful litigation.
 - i. The respondent can only be granted any interim reprieve inform of a stay upon depositing the entire decretal sum in an interest earning account of the parties' advocates.
4. The parties did not file submissions on the application. The Court has considered parties' respective positions and returns as follows.



5. The only dispute is that there is a mathematical error on record.
6. There Court awarded a gross of Kshs.1,277, 099.83. The claimant had already received a net payment of Kshs.692, 000.00. The Court finds that indeed there is an error of outstanding amounts being the gross less the net paid which the Judgment computed as Kshs. 585, 099.83. That computation is reviewed and substituted with the amount payable as (Kshs.1, 277,099.83 less PAYE) and less Kshs. 692,000.00 net already received. The applicant has not justified the deduction of NSSF and NHIF as urged and which is returned as unfounded. The error was by the Court and each party to bear own costs of the application.

In conclusion, the judgment herein is reviewed as found in this ruling with orders:

1. Order 2 in the judgment delivered herein on 16.02 2023 is deleted and inserting: The respondent to pay the claimant a sum of (Kshs.1, 277,099.83 less PAYE) and less Kshs.692,000.00 net already received by the claimant, and, to pay by 01.10.2023 failing interest at court rates be payable thereon from 04.08.2023.
2. Each party to bear own costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 04TH AUGUST, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

