



Parmar v African Express Airways (Employment and Labour Relations Cause 1434 of 2017) [2023] KEELRC 2711 (KLR) (31 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2711 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1434 OF 2017**

**K OCHARO, J
OCTOBER 31, 2023**

BETWEEN

JAMEEL ASHVINKUMAR PARMAR CLAIMANT

AND

AFRICAN EXPRESS AIRWAYS RESPONDENT

RULING

1. The Claimant herein filed a Notice of Motion dated 24th May 2023 seeking the following orders: -
 - a. Spent.
 - b. That there is an arithmetic error and/or mistake on the face of the record as it appears in paragraphs 46 and 47 of the Judgment. The Honourable judge under paragraph 46 granted the Claimant compensatory relief as allowed in Section 49 (1) (c) of the Employment Act. The Honourable Judge held that the Claimant was entitled to 6 months' gross salary amounting to USD 2,700.
 - c. That further, there is an apparent error and/or mistake on the face of the judgment. Under paragraph 40 of the said judgment, the Honourable Judge awarded the Claimant USD 6000 being the sum owed to the Claimant for the extra duties he was assigned when he was employed by the Respondent.
 - d. That this Honourable Court be pleased to forthwith review the judgment delivered on 27th April 2023.
 - e. Any other orders the Court may deem fit in the interests of justice.
 - f. The costs of the application be provided for.



2. The Claimant’s application is expressed to be under the provisions of Order 45 Rule 1 and 2; Order 50 Rule 1 of the *Civil Procedure Rules 2010*; Sections 1A, 1B and 3A of the *Civil Procedure Act*. It is supported by the annexed Affidavit of Jameel Ashvinkumar Parmar sworn on 24th May 2023, contents whereof I have noted.
3. The Grounds upon which the Notice of Motion dated 24th May 2023 is premised are that:
 - i. Judgment was delivered by this Court on 27th April 2023 in favour of the Claimant;
 - ii. There appears to be an arithmetic error on the face of the judgment in that the Court held that the Claimant was entitled to 6 months gross salary amounting to USD 2,700, rather than USD 27,000 as calculated against the undisputed gross monthly salary of USD 4,500; and
 - iii. There appears to be an apparent error on the face of the Judgment in that the sum of USD 6000 which was awarded to the Claimant in paragraph 40 of the Judgment as the sum owed for extra duties, is excluded from the final orders in paragraph 49 thereof.
4. Under Order 45 Rule 1, a party who is aggrieved by an order of a Court may apply for review of the same. It provides: -
 - “(1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.” (Emphasis Mine)
5. In the *National Bank of Kenya Ltd v Ndungu Njau* the Court of Appeal elaborated on what constitutes the error or omission contemplated in Order 45, and when it can properly be used as a ground to attract an exercise of court’s discretion to review an order or decree, thus:-

“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. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
6. Though the Applicant has not anchored his application on the provisions of section 99 of the *Civil Procedure Act*, I find it imperative to state that the provision is that the most appropriate vessel available to the Court either suo moto or at the instance of any of the parties to rectify clerical or arithmetical



mistakes in judgments, decrees or orders, or errors arising from any accidental slip or omission. The jurisdiction isn't fettered at all.

7. On the applicability of the provision the Court in the case of *Nguruman Limited v Attorney General & another* [2021] eKLR. held: -

“16. The Courts have set out guidelines which govern the circumstances under which the exercise of the jurisdiction to correct clerical or arithmetical mistakes in judgments, decrees or orders is made. In *Vallabhdas Karsandas Raniga v Mansukhlal Jivraj and others* [1965] EA 780, the East African Court of Appeal held:

“Section 3(2) of the *Appellate Jurisdiction Act* confers on the Court of Appeal the same jurisdiction to amend judgments, decrees and orders that the High Court has under section 99 of the *Civil Procedure Act*, making it unnecessary to look to the inherent powers of the court. The words “at any time” in section 99 clearly allow the power of amendment to be exercised after the issue of a formal order....“Slip orders” are made to rectify omissions resulting from the failure of counsel to ask for costs and other matters to which their clients are entitled.....A court will only apply the slip rules where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention. In the present case, if the facts had been before the court when judgment was given on appeal, the court would, on application or indeed of its own motion, have made the order for refund, now sought, which was necessarily consequential on the decision on the main issues.”

17. A court will only correct a defect where it is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given.
18. It is my considered view that the errors alleged, are clerical error owing to an accidental slip which if corrected, would not affect the substance of the judgment. The intention of this Court was to grant the Petitioner/ Applicant compensation equivalent to the value of the subject land as captured in the unchallenged valuation report filed by the Petitioner.
19. In arriving at the said figures/amounts, this court made reference and was guided by the Valuation Report filed in court by the Petitioner/ Applicant from the firm of Messrs. COG Consultants Limited; confirming that the value of the suit land parcel was Kenya Shilling Thirty-three Billion, Three Hundred and Fifty million. The said report was not challenged by the Respondents on its authenticity or admissibility and therefore the same stood uncontroverted.
20. In the circumstances and in associating myself with the above decisions, as well as relying on the legal provisions cited, I am fully satisfied that the amendments



sought will give the full effect of the intention of this court when judgment was delivered.”

8. Reflecting on the intention of this Court as revealed in the body of the judgment, I am persuaded that there are clerical and or mathematical errors that should be rectified. The compensation under section 49 of the *Employment Act* was miscalculated. The award for extra duties awarded in the Judgment hasn't been captured in the awards section of the judgment. In paragraph 46 of the Judgment, the Court held that the Claimant was entitled to a compensatory relief for unfair termination to an extent of 6 months gross salary. Its express intention was therefore to award the Claimant 6 months' gross salary as compensation.
9. Having found that the Claimant's evidence that he earned a monthly gross salary of USD 4,500 was uncontroverted by the Respondent, 6 months gross salary amounts to USD 27,000. I return that the tabulation of 6 months' gross salary at USD 2,700 was a clerical/arithmetic error, it must be correct under Section 99 of the *Civil Procedure Act* 2010.
10. Concerning the sum owed for extra duties that the Claimant performed, the same was awarded to the Claimant in paragraph 40 of the Judgment. The failure to include the same in paragraph 47 of the Judgment as one of those reliefs awarded, was an error curable under the provisions of section 99 of the *Civil Procedure Act* and or Order 45 of the *Civil Procedure Rules*.
11. Consequently, the Claimant's Notice of Motion application is allowed in the following terms: -
 - a. The judgment and more specifically the award of compensation under the provisions of Section 49 (1) (c) of the *Employment Act* 2007 is reviewed to USD 27,000 in place of USD 2,700. Paragraphs 46 and 47 (E) of the Judgment are hereby amended to reflect the review.
 - b. The award of USD 6,000 for the extra duties due and owing to the Claimant is hereby granted to the Claimant under Paragraph 47 (E) (i) of the Judgment.
12. Imperative to note that the application was not opposed by the Respondent.
13. Orders accordingly.

READ, DELIVERED AND SIGNED THIS 31ST DAY OF OCTOBER, 2023.

OCHARO, KEBIRA

JUDGE

In the presence of:

Ms Wangui for Claimant/Applicant

No appearance for Respondent

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.

OCHARO KEBIRA

JUDGE

