



Kenya Union of Commercial Food and Allied Workers v Komothai Coffee Growers Limited (Cause 708 of 2019) [2023] KEELRC 3397 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3397 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 708 OF 2019
SC RUTTO, J
DECEMBER 20, 2023**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

KOMOTHAI COFFEE GROWERS LIMITED RESPONDENT

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion Application dated 7th September 2023, through which it seeks review of the Court's Judgment delivered on 28th October 2022.
2. The Application which is supported by the Affidavit of Helina Macharia is premised on the following grounds: -
 - a. The Court gave its direction in respect to payment of unpaid salaries for the period January to December 2018
 - b. In its final analysis on pages 7 & 8 the Honorable Court ordered that fifty grievants be paid Ksh13,613,025.00 being the salaries for January to December 2018 but the total in the judgment is totaling to 11,673,684.00 which is far below the correct amount.
 - c. In judgment pages 7 & 8 the names numbers 4, 11, 12 and 20 does not exist in the amended claim and therefore they should be removed from the judgment.
 - d. In the judgment, the following names are repeated twice hence confusing;
 - i. The grievant no. 4 is wrongly written but again repeated correctly in no. 45.
 - ii. The grievant no. 11 is wrongly written but again correctly written in number 41.



- iii. The grievant no. 12 is wrongly written but again repeated correctly written in no. 39.
 - iv. The grievant 20 is wrongly written but again repeated correctly in no. 47.
 - e. In the final judgment of the court for grievants were left out who are John Ngei Ngethe, Abraham Muhia Thangate, James Muiru Kariuki and John Kiuru Kiarie.
 - f. The figures awarded to the grievants in page 7, 8 and 9 does not tally to 13,613,025.00 but when added up the total is 11,673,684.00 which is an error and unless corrected by this Honourable Court it will affect the award of each grievant.
3. The Respondent did not oppose the Application.
 4. The Court has considered the Application as well as the grounds raised in support thereof and evidently, the Court is being called upon to relook at its Judgment and correct the errors appearing on its face.
 5. Rule 33(1) (b) of the *Employment and Labour Relations Court (Procedure) Rules* allows review of a judgment or ruling on account of some mistake or error apparent on the face of the record.
 6. The instant Application relates to correction of names and arithmetical errors appearing on the face of the record. At the outset, I must point out that the Claimant exhibited a set of two lists, a handwritten one and a typed one. The first list which is handwritten, contains 37 names whereas the second list which is typed, contains 50 names.
 7. With regards to the names of some grievants, the Claimant avers that the grievants appearing in numbers, 4,11,12 and 20 of the Judgment do not exist hence should be removed from the Judgment. The said grievants are identified as Joseph Mwangi Njuguna, Josiah Ngata, Margaret Wanjiru and Peris Njoki. It is worth pointing out that the names appearing under numbers 4,11,12 and 20 of the Judgment were drawn from paragraphs 5 and 6 of the Amended Memorandum of Claim.
 8. Revisiting the Judgment, it is evident that the said names bear a close resemblance with those at numbers 39,41, 45 and 47 of the Judgment as they contain an additional third name. Noting the close resemblance of the grievants' names under numbers 4,11,12 and 20 of the Judgment with those under numbers 39, 41, 45 and 47, it is more than probable that there was a replication of names given the different set of lists exhibited by the Claimant.
 9. Still on the issue of the grievants' names, the Claimant has sought to have the names of John Ngei Ngethe, Abraham Muhia Thangate, James Muiru Kariuki and John Kiuru Kiarie included in the list of the beneficiaries. However, the names of the said grievants are not contained in paragraphs 5 and 6 of the Amended Memorandum of Claim but are in the typed list exhibited by the Claimant.
 10. As stated herein, the Claimant exhibited different sets of lists containing the names of the grievants whose salaries were unpaid. A perusal of the typed list containing the names of the unpaid grievants for the period January 2018 to December 2018 bears the names John Ngei Ngethe, Abraham Muhia Thangate, James Muiru Kariuki and John Kiuru Kiarie who are notably missing from the Judgment.
 11. In light of the foregoing, it is evident that there is a mistake and error apparent on the face of the Court record. Accordingly, the Application has satisfied the threshold established under Rule 33(1) of the *Employment and Labour Relations Court (Procedure) Rules* hence is meritorious.
 12. In the circumstances, the Application dated 7th September 2023 is hereby allowed and the names appearing at numbers 4,11,12 and 20 of the Judgment are hereby expunged. Further, John Ngei



Ngethe, Abraham Muhia Thangate, James Muiru Kariuki and John Kiuru Kiarie are included in the Judgment delivered on 28th October 2022 and are entitled to withheld salaries as follows:

1. James Muiru Kariuki Kshs 327,928.40
 2. Abraham Muhia Thangate Kshs 266,736.60
 3. John Ngei Ngethe Kshs 266,736.60
 4. John Kiuru Kiarie Kshs 313,518.00
13. Consequently, the total award is hereby reviewed from the sum of Kshs 13,613,025.00 to the sum of Kshs 12,063,745.60.
14. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2023.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant/Applicant No Appearance

For the Respondent No Appearance

Court Assistant Abdimalik Hussein

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 had 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 Civil 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.

STELLA RUTTO

JUDGE

