



**Njenga v Muchiri t/a Neema Apartments (Cause 134 of 2018)
[2023] KEELRC 3360 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3360 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 134 OF 2018
DN NDERITU, J
DECEMBER 13, 2023**

BETWEEN

ROBERT NDUATI NJENGA CLAIMANT

AND

JOSEPH KIMANI MUCHIRI T/A NEEMA APARTMENTS RESPONDENT

RULING

I. Introduction

1. In a judgment delivered on 14th November, 2019, the court (Mbaru J.) entered judgment in favour of the claimant against the respondent as follows –
 - a. Compensation awarded at.....Kshs. 25,031.70
 - b. Notice pay.....Kshs. 25,031.70
 - c. Underpayments.....Kshs.504,125.00
 - d. Pay for 4 days worked in
March 2018.....Kshs. 4,821.00
 - e. Costs of the suit.
2. By way of a notice of motion (the application) dated 31st October, 2023 the claimant/decreed holder is seeking the following –
 1. Spent
 2. That the judgment of the Honourable Justice Mbaru be amended so as to include the sum of Kenya Shillings Fifty Eight Thousand, Four Hundred and Five and Sixty Cents.



3. That Applicant be allowed to recover interest on the decretal sum from the date of the judgment until payment in full.
4. That the cost of this Application be provided for
3. The application is brought under the provisions of Sections 1A, 1B, 3A, & 99 of the *Civil Procedure Act*, and Order 21 Rule 3(3) & Order 50 Rule 1 of the *Civil Procedure Rules*, and all other enabling provisions of the law. It is based on the grounds on the face of it and supported with the affidavit of Robert Njenga Nduati, the claimant, sworn on 31st October, 2023 with several annexures thereto.
4. When the application came up in court for directions on 14th November, 2023, Miss Mugweru for the claimant and Mr. Kahiga for the respondent informed the court that they intended to engage and possibly record a consent. The application was thus stood over to 21st November, 2023, ostensibly for the purposes of recording a consent.
5. On 21st November, 2023, Mr. Kahiga for the respondent did not show-up in court and Miss Mugweru for the claimant informed the court that no consent had been reached. Counsel for the claimant informed the court that no response to the application had been filed and prayed that the application be allowed as prayed.

II. Analysis & Determination

6. It is deposed in the supporting affidavit that in paragraph 5 of page 3 of the impugned judgment the learned Judge awarded to the claimant leave pay in the sum of Kshs.58,505.60 but when making the final orders, reproduced above, the court failed to specifically grant the said sum of money and to compute and include the same in the award.
7. It is deposed that the omission was evidently and clearly inadvertent as the clear intention of the judgment was to award the said sum alongside the other amounts stated in the final orders in the judgment.
8. It is deposed that it is only upon applying for execution by way of warrants of arrest against the respondent/judgment debtor in October, 2023 that the claimant detected the omission. Further, it is deposed that the claimant then moved with speed in filing the instant application with a view of rectifying the anomaly.
9. It is deposed that the Deputy Registrar (DR) of this court has declined to include the above amount and interest in issuing the warrants of arrest in execution against the respondent on the basis that the same were not awarded in the judgment.
10. It is insisted by the claimant that if the said amount together with interest on the decretal sum is not allowed to be included as prayed in the application the claimant shall not fully enjoy the fruits of the judgment.
11. It is on the basis of the foregoing that the claimant pleads that the application be allowed as prayed.
12. I have carefully gone through the impugned judgment by Mbaru J. and I have no doubts in my mind that the omission of the award of Kshs.58,405.60 was inadvertent and an error apparent on the face of



the record. This is so because in the relevant passage in page 3 of the said judgment the learned Judge wrote as follows –

“The claimant is only seeking leave pay for 3 years and 8 months prorated which is due under the provisions of Section 28 of the *Employment Act, 2007* and which should be premised on the rate of 21 days each year and 8 months prorated assessed at Kshs.58,405.60.”

13. Yet, the above award is missing in the list of final orders that were granted. This is an error that this court should correct without hinderance in the interest of justice and in line with the provisions of laws upon which the application is premised, as cited above, and also in line with Section 3 of the *Employment and Labour Relations Court Act* and Rule 34 of the *Employment and Labour Relations Court (Procedure) Rules*.
14. On the other issue of interest on the decretal sum plus costs, Section 26 of the *Civil Procedure Act* provides as follows –
 26.
 - (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such a rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
 - (2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 percent per annum.
15. It is the view of this court that unless otherwise ordered interest on decretal sum plus costs should freely be awarded to the decree-holder regardless that the court may have omitted to state so in the judgment.
16. For all the foregoing reasons, this court shall allow the application dated 31st October, 2023 by the claimant and order as follows -
 - a. That omission of the award of the sum of Kshs.58,405.60 in the judgment of 14th November, 2019 was an inadvertent omission that is hereby rectified and the said sum is awarded to the claimant as it ought to have been so awarded.
 - b. That a new decree be issued factoring in the award in (a) above.
 - c. That interest on the decretal sum and costs be charged and awarded to the claimant at court rates from the date of the judgment till payment in full.
 - d. That consequently, the judgment-creditor shall now re-apply for execution factoring in the above changes in the amounts now due and payable.
 - e. That there is no order as costs.

DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 13TH DAY OF DECEMBER 2023.

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DAVID NDERITU



JUDGE

