



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 785 OF 2017

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

JOSEPH OGARO OTWORI.....CLAIMANT

VERSUS

DIMAMU AGENCIES LIMITED.....RESPONDENT

RULING

The Claimant instituted this case on 27th April, 2017 through a memorandum of claim dated 24th April, 2017.

1. The Respondent entered appearance through the firm of Kingoo & Associates Advocates but failed or refused to put a response. The matter proceeded as an undefended claim.

2. The court delivered its Judgment on 13th August, 2021 in which the Claimant on 3rd September, 2021 filed an application to review the same.

The application is supported by the affidavit of Mutua Muli Advocates for the Claimant.

3. The Claimant served the application on the Respondent’s advocates but the said advocates did not oppose the application.

4. The court found the termination of the Claimant was unlawful and unfair and awarded some of the reliefs prayed.

5. The court having been the one that delivered the Judgment as provided in Section 33(2) of the Employment and Labour Relations Court Rules has considered the application by the Claimant/Applicant dated 3rd September, 2021 as well as his written submissions in support of the application dated 1st November, 2021 for review of the said Judgement.

6. On further interrogation the court finds the Claimants dissatisfaction on some of the reliefs that were not granted is merited.

The court has considered the observations by the learned Judge in the case of **NATIONAL BANK OF KENYA LIMITED VS NDUNGU NJAU (1996) eKLR 469** where it was held that review may be granted whenever court considers it necessary to correct an error or omission on the part of the court.

The error should be evident and not require elaborate argument to be established.

Further in the case of **GEORGE VS ARFA AFRA LIMITED T/A IMAX AFRICA LIMITED 234 OF 2019** the court noted that review is not meant to reopen cases that are heard.

7. Having observed the circumstances where review is considered, I proceed to make the following revisions to my Judgment and taking into consideration that the Respondent did not put a response to the claim and therefore did not controvert the Claimants prayers/reliefs: -

1. Days worked.....Kshs.3,076.92

2. Lieu of leave.....Kshs.37,692.03

3. In lieu of rest days.....Kshs.93,537.76
4. In lieu of Public holidays.....Kshs.18,461.40
5. In lieu of House allowance.....Kshs.84,000.00
6. Service pay.....Kshs.28,707.48
7. Compensation having worked for a period of 3 years, I will award him 3 months....Kshs.48,000.00

8. The total award as reviewed will be.....Kshs.313,475.59/=.

9. I also award costs to the Applicant/Claimant having succeeded in the case.

10. Interest will also be awarded at court rates till full payment.

I had already ordered the Claimant be given his certificate of service.

And it is so ordered.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 20TH DAY OF JANUARY, 2022

ANNA NGIBUINI MWAURE

JUDGE

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.

ANNA NGIBUINI MWAURE

JUDGE