



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 409 OF 2017**

**ANTHONY ORIDO.....CLAIMANT**

**VERSUS**

**MAYFAIR HOLDINGS LTD T/A IMPERIAL HOTEL/**

**IMPERIAL HOTEL EXPRESS.....RESPONDENT**

**RULING**

1. In a judgment delivered on 17 February 2021, the Court found that the termination of the employment of Anthony Orido (the applicant) was unfair and awarded him the equivalent of 5-months gross wages as compensation.
2. On 18 March 2021, the applicant filed a Motion seeking orders:
  - (1) ...
  - (2) THAT this Honourable Court do review the judgment made on the 17<sup>th</sup> day of February 2021 as there was an error apparent on the face of the record as the Claimant's submissions had not been placed in the Court file for the Court's consideration at the time of writing the judgment herein.
  - (3) THAT costs be provided for.
3. The primary reasons advanced in support of the Motion was that the applicant's submissions had been sent to the Court through email on 24 December 2020 and paid for on 4 January 2021, but the Court registry failed to place the same in the Court file for consideration by the Court.
4. Consequently, the applicant contended that had the Court considered the submissions, it would have factored in the conditions contemplated by section 49(4) of the Employment Act, 2007 and awarded more than the equivalent of 5-months gross wages as compensation.
5. The applicant further asserted that had the Court considered the submissions, it would have awarded him the claim for overtime.
6. Mayfair Holdings Ltd (the Respondent) filed Grounds of Opposition on 21 July 2021 in which it contended that the application was fatally defective, an abuse of the court process, frivolous, lacking in substance and that the applicant's option was to prefer an appeal against the judgment because there was no error apparent on the face of the record.
7. The applicant filed submissions in support of the Motion on 5 August 2021, while the Respondent filed its submissions on 27 September 2021.
8. The Court has considered the Motion, affidavit in support, the Grounds of Opposition and submissions.

**Overtime**

9. In rejecting the applicant's claim for overtime, the Court gave reasons including that the contract in place provided that in lieu of overtime, the applicant would get off-days, and that the applicant had failed to lay an evidential foundation to the head of claim because he did not disclose the particular Regulation of Wages Order which applied to the sector the Respondent operated in.

10. The applicant has now been disclosed the particular Order in the submissions in support of the Motion.

11. The Court finds that having given reasons for declining this head of the claim, there was no error apparent on the face of the record curable through the review jurisdiction.

### **Compensation**

12. While awarding compensation, the Court considered the applicant's length of service of 5-years.

13. Under section 49(4) of the Employment Act, 2007, the Court is enjoined to consider any or some of the 14 factors outlined in section 49(4)(a) to (m) of the Act.

14. The Court again, finds no error apparent on the face of the record since it set out the factor it considered in awarding compensation.

### **Conclusion and Orders**

15. The Motion filed in Court on 16 March 2021 is found without merit and it is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 19<sup>TH</sup> DAY OF JANUARY, 2022**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **Appearances**

For Claimant Akolo Wanyanga & Co. Advocates

For Respondent Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura