



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 384 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

MOSES WANYAMA OMONDI.....CLAIMANT/APPLICANT

VERSUS

AGILITY LOGISTICS LIMITED.....RESPONDENT

RULING

1. Vide his application dated 12th June 2020, the Claimant/Applicant seeks the following orders: -

(a) The the Court be pleased to amend its judgment delivered on 22nd November 2019 to read a total sum of Kshs.247,866.70 instead of Kshs.225,866.70.

(b) Costs be provided for.

2. In both his supporting affidavit and the grounds in support of the application, the Claimant states that the Court erroneously awarded Kshs.225,866.70 instead of Kshs.247,866.70.

3. He states that his Counsel has written to Counsel for the Respondent to agree to the correction of the error by consent through a letter dated 6th December 2019 and a reminder of 4th February 2020 to no avail. That this being an arithmetical error, the application is merited.

4. In the submissions dated 22nd November 2021, Counsel for the Claimant reiterates the averments in the grounds in support of the application and the Claimant's supporting affidavit.

5. It is further submitted for the Claimant that under Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2016, the Court has mandate to correct arithmetical errors in its judgments.

6. The Respondent opposes the application through the replying affidavit of Joyce Kanuri-Mwangi, its Human Resource and Administration Manager.

7. In the replying affidavit, Ms Kanuri-Mwangi deposes that there is no arithmetical error in the judgment of Ongaya J. delivered on 22nd November 2017.

8. It is further the Affiant's averment that the Respondent has paid the decretal sum which the Respondent in fact overpaid and the Applicant has come to Court with unclean hands, having not disclosed the overpayment.

9. In the submissions, the Respondent reiterates that the Claimant was overpaid as there was no statutory deduction made by the Respondent as provided under Section 49(2) of the Employment Act.

10. It is further submitted that the arithmetical error alluded to by the Claimant is non-existent.

11. The Respondent further submits that the application is incurably defective as it does not disclose the grounds for review as provided under Section 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

12. The Respondent prays that the application be dismissed.

Analysis and Determination

13. In the judgment delivered by this Court on 22nd November 2019 by my brother Ongaya J. who has since been transferred from this station, the Court entered judgment for the Claimant against the Respondent as follows: -

a) Payment of the sum of Kshs.225,866.70 by 15.01.2020 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.

b) The respondent to pay the claimant's costs of the suit.

14. It is clear from the itemised heads of judgment that the Court awarded the following: -

i) 8 months' compensation Kshs.176,000.00

ii) Pay in lieu of notice Kshs.22,000.00

iii) Salary for April 2014 Kshs.22,000.00

iv) Salary for 8 days of May 2014 Kshs.5,866.70

v) Pay in lieu of leave Kshs.22,000.00

Total **Kshs.247,866.70**

15. It is thus clear from the foregoing, that there was an error in the judgment as the Judge awarded Kshs.225,866.70 instead of Kshs.247,866.70 as tabulated in the judgment.

16. Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provide for review of judgments and orders as follows –

33. Review

(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

a. if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

b. on account of some mistake or error apparent on the face of the record;

c. if the judgment or ruling requires clarification; or

d. for any other sufficient reason.

17. Rule 34 of the said Rules provides for correction of mistakes and arithmetical errors as follows –

34. Correction of errors

The Court shall, either at the request of the parties or on its own motion, cause any clerical mistake, incidental error or omission to be rectified and shall notify the parties of such rectification.

18. The grounds in the replying affidavit and the submissions of the Respondent are irrelevant in the face of the manifest error on the face of the judgment.

19. I thus find the application merited and hereby correct the judgment by deleting Kshs.225,867.70 and replacing it with the sum of Kshs.247,886.70. The judgment is thus corrected to read as follows –

a) Payment of the sum of Kshs.247,866.70 by 15.01.2020 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.

b) The respondent to pay the claimant's costs of the suit.

20. There shall be no orders for costs for this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 18TH DAY OF JANUARY 2022

MAUREEN ONYANGO

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 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.

MAUREEN ONYANGO

JUDGE