



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 15 OF 2018

HENRY OLUOCH ONYANGO.....CLAIMANT

v

ANVI EMPORIUM LIMITED.....RESPONDENT

RULING

1. In a judgment delivered on 3 March 2021, the Court found that the termination of the employment of Henry Oluoch Onyango (the applicant) was unfair and awarded him the equivalent of 5-months gross wages as compensation.
2. The applicant was aggrieved and on 30 August 2021, he filed an application seeking review of the judgment on the ground that there was an error apparent on the face of the record.
3. In seeking the review, the applicant contended that that the Court awarded pay in lieu of notice of Kshs 6,160/- while he was earning Kshs 12,100/- at the time of separation; there was a collective bargaining agreement which provided for 3-months' salary in lieu of notice yet the Court awarded 1-month pay in lieu of notice; the Court had not taken into account yearly salary increments; the Court failed to award salary underpayments, severance pay and unpaid leave.
4. The Managing Director of the Respondent filed a replying affidavit in opposition to the Motion and he deposed that the applicant was introducing new facts which were within his knowledge but had not been placed before the Court during the hearing and that there was no error apparent on the face of the record.
5. The applicant filed his submissions on 1 December 2021 and the Respondent filed its submissions on 16 December 2021.
6. The Court has considered all the material placed at its disposal.

Applicant's salary

7. In the filed witness statement, the applicant stated that he was earning Kshs 280/- per day at the time of separation. It is the rate that the Court used to arrive at an average monthly wage.
8. While seeking review, the applicant contended that he was earning a monthly salary of Kshs 12,100/- but he did not present any documentation to support the assertion.

Underpayments and pay in lieu of notice

9. The applicant did not plead a case for underpayments, nor did he produce before the Court any collective bargaining agreement to buttress an award of 3-months' salary in lieu of notice and it is misguided of him to now assert that the Court fell into error in failing to consider such a head(s) of claim.

Compensation and severance pay

10. The Court gave reasons for awarding compensation and gave reasons for declining to award severance pay.
11. The Court is therefore of the view that these awards can only be challenged on appeal and not under the review jurisdiction.

Conclusion

12. From the foregoing, the Court finds the Motion filed in Court on 30 August 2021 without merit. It is dismissed with costs to the Respondent.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 16TH DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant	in person
For Respondent	K'Owino & Co. Advocates
Court Assistant	Chrispo Aura