



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO.60 OF 2018

TOM OBONYO.....CLAIMANT

VERSUS

TEX PRO LIMITED..... RESPONDENT

RULING

1. Before this Court for determination is the Respondent/ Applicant's application dated 14th January, 2022 filed under certificate of urgency pursuant to Section 16 of the Employment and Labour Relations Court Act, Rule 33(1) of the Employment and Labour Relations Court Procedure Rules 2016 and Order 42 Rule 56 of the Civil Procedure Rules 2010. The Applicants sought for the following Orders:-

a) Spent.

b) That pending hearing and determination of this Application, the Honourable Court be pleased to stay execution of the Judgement delivered on the 16th November, 2021 by the Honourable Lady Justice Hellen Wasilwa.

c) That this Honourable Court be pleased to review and or set aside the Judgement delivered on the 16th November, 2021 by the Honourable Lady Justice Hellen Wasilwa.

d) That the costs of this Application be provided for.

2. The Application is based on the grounds on the face of the Application and the supporting Affidavit deposed upon by **Baiju Devraj Patel**, the Respondent's Managing Director, on the 14th January, 2022 based on the following grounds; -

a) Judgement was delivered on the 16th November, 2021 in favour of the Claimant as against the Respondent for payment of Kshs 382,800 less statutory deductions.

b) That at paragraph 35 of the judgement the Court found the issue of overpayment, late reporting and absenteeism to have not been proved when the Claimant had admitted to receiving the overpayment and committed himself to repaying the overpayment vide his letter marked as APP-9, in the Claimant's list of documents.

c) It is stated also that the Court found the allegation by the Claimant requesting to be paid his dues and to exit the Respondent's employ not proven, without considering the minutes of the 5th June, 2017.

d) It is stated that due to these errors the Court arrived at an erroneous decision and found the Claimant to have been unfairly terminate when the Claimant left on his own volition.

e) It was then stated that the Court also miscalculated the dues owing to the Claimant and arrived at Kshs. 382,800 instead of Kshs. 272,000. Therefore, that the errors are on the face of record which requires this Court to make the requisite corrections and urged this Court to allow the application.

3. In response, the Claimant filed a replying Affidavit deposed upon on the 24th February, 2022 based on the following grounds:-

a) That the judgement delivered by the Court on the 16th November, 2021 is sound and does not need any interference.

b) It was stated that there is no new evidence that the applicant has unearth to require this Court exercise its discretion and review the

judgement

c) The Respondent also stated that the Application was filed in contravention of the requirement of Order 9 Rule 9 (a) that require a new advocate taking over conduct of a matter after judgement to either seek leave of Court or file a consent with the outgoing advocate.

d) The Claimant/ Respondent also avers that the application has been brought about 3 months from the date when judgement was rendered therefore that there is inordinate delay and that the application is an afterthought and an abuse of Court process.

e) The Claimant/ Respondent then urged this Court to dismiss the application with costs.

4. The Application was argued orally and the advocates for each parties reiterated on the averments in their respective affidavits.

5. I have examined the averments of the parties herein. At paragraph 35 of this Court's Judgment, this Court never alluded to the fact that the overpayment had been admitted by the Claimant.

6. No evidence was adduced to show that the Claimant admitted to being overpaid.

7. The issue of the Claimant leaving the employment of the Respondent on his own volition was also never established.

8. In any case, this application has been filed by counsel who is improperly on record and therefore the application remains improperly on record.

9. The application is accordingly struck out.

RULING DELIVERED VIRTUALLY THIS 21ST DAY OF APRIL, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Kimuge for Respondent/Applicant – present

Opar for Respondent – present

Court Assistant - Fred