



**Mwania v Governor, Nakuru County & another (Petition
E008 of 2020) [2022] KEELRC 1703 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1703 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E008 OF 2020
HS WASILWA, J
MAY 19, 2022**

BETWEEN

LAWRENCE MWANGANGI MWANIA PETITIONER

AND

COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT

GOVERNOR, NAKURU COUNTY 2ND RESPONDENT

RULING

1. Before me for determination is the petitioner/applicant's application dated December 6, 2021 filed under certificate of urgency on the December 7, 2021 pursuant to rule, 34, rule 17(1)(2)(3)(8) of the Employment and Labour Relations Court Procedure Rules 2016, section 3(1) of the Employment and Labour Relation Court Act, section 99 of the Civil Procedure Act, article 159 (2)(d) of the Constitution of Kenya 2010 and all other enabling provisions of the law seeking the following orders;-

- a. That this application be certified urgent and the same be heard exparte in the first instance and the application be heard on priority basis.
- b. That the Court be pleased to correct and rectify incidental clerical and or arithmetic errors in the judgment dated 11.11.2021 at paragraph 41 of the judgement (the award) and specifically at award number 2 and at the Grand total as follows; -

No.2;

The Petitioners salaries, benefits and all dues as from July, 2020 to November, 2022 as tabulated by the Petitioner" as specifically awarded/worded by the Court) totals Kshs.9,712,500 and not Kshs 5,617,500 as indicated by the judgement.(Refer to prayer g(i),(ii),(iii) of the Petition dated 15.12.2020 and paragraph 37 (a)(i)(ii)(iii) of the Petitioner submissions dated 21.9.2021.Even the award of gratuity in the judgement has been Calculated using the said correct figure of Kshs 9,712,500 and not the erroneous figure of Kshs 5,617,500.



Grand Total

Even before the aforesaid correction, the sum of of the various awards in the judgment totals to Ksh 14, 240,875 and not Kshs 12, 240,875 as adjudged.

Corrected Grand Total

Upon correction of award number 2 as aforesaid, the final grand total would be Kshs 18,335,875 and not Kshs 12, 240, 875 as indicated in the judgment.

- c. That costs of this application be in the cause.
2. This application is supported by the grounds on the face of the application and the affidavit of the Petitioner, Lawrence Mwangangi Mwanja deposed upon on the 6th December, 2021 and based on the following grounds; -
 - i. That there are clerical/arithmetic errors that need correction at paragraph 41 of the Judgement (The award) and specifically award number 2 and the grand total.
 - ii. That it's imperative that the said errors be corrected so that the final figure in the award tallies with the spirit and the letter of the judgement.
3. In response to the Application the Respondent filed a replying affidavit deposed upon by Benjamin Njoroge Kiragu, the County secretary and head of Public service, on the 4th March, 2022. The affiant avers that the petitioner/applicant is seeking to introduce new figures separate from the one awarded by the Court without any basis. Further that the respondent has filed a notice of appeal having been dissatisfied with the award more so on the fact that the petitioner is gainfully employed as Deputy County Commissioner in the ministry of interior and coordination.
4. It was further stated that the gratuity payable to the Respondent employees are derived out of a contributory scheme where the employer and the employee are required to make their respective contributions.
5. The Respondent's deponent filed a further affidavit deposed upon on the 22nd march, 2022 reiterating the contends of his earlier affidavit and in addition stated that the Petitioner owes it Kshs 3,340,027.30 which sum was not factored in the Court's award. Also that the figures in dispute are subject of an Intended appeal and the Petitioner will not be prejudiced in any way if the application is disallowed.
6. The Application was disposed of by way of written submissions with the Petitioner filing on the March 22, 2022 while the Respondent file theirs on the March 25, 2022.

Petitioner/Applicant's Submissions.

7. The Petitioner submitted from the onset that its application is not a review application as provided for under Rule 33 of this Court's rules rather that it's an application under rule 34 which is merely aimed at correcting clerical errors made by the Court. The Petitioner submitted that his tabulation of dues he could have earned as indicated in award number 2 amount to Kshs 9,712,500 and not the Kshs. 5,617, 500 awarded by the Court which sum affected the grant total which will become Kshs 18,335,875.
8. With regard to the alleged appeal raised by the Respondent, it was submitted that the Respondent has basically filed a Notice of Appeal on 15.11.2021 and not file the Memorandum of Appeal and the record. It was then submitted that having not filed an appeal after lapse of 60 days the appeal is considered to have been withdrawn as per Rule 83 of the Court of Appeal Rules.



9. The Petitioner then submitted that the Respondent having not raised any objection to the correction of the errors the same ought to be allowed as prayed.

Respondent's Submissions.

10. The Respondent maintain that the Court's calculations are properly done and what the Petitioner seeks to do is introduced new figures of an award which was not granted by this Court.
11. The Respondent then submitted that it has not filed the Memorandum of Appeal as its awaiting for copies of the proceedings and the judgement to file its Appeal in any case that the issue of whether there is a valid appeal or not is within the purview of the Court of Appeal and not this Court. Additionally, that the issue of the Petitioner being in gainful employment with the national government was not factored in the judgement neither was the issue that the gratuity was paid from contributory scheme, which issues will be raised in the Court of appeal.
12. It was then argued that the issue in dispute herein are matters that will be raised in the Court of appeal which will have effect of altering the figures disputed by the Petitioner therefore that the Respondent be allowed to pursue its appeal and this application be dismissed with costs to the Respondent for lacking merit.
13. I have considered the averments and submissions filed herein. The applicant seeks review of this Court's Judgment in particular paragraph 41 of the Judgment and specifically clause 2 and the Grand Total.
14. In paragraph 41 clause 2 of the Judgment I awarded the Petitioner all his salaries, benefits and dues that the Petitioner would have earned for the remainder of contract from July 2020 to November 2022 as tabulated. I indicated the said figure to be 5,617,500/=.
15. In the petition dated 15/12/2020 prayer g(i), (ii), (iii) the Petitioner tabulated salary he would have earned to be kshs.1,225,000 + 3,937,500 + 4,550,000
This totals – 9,712,500 and not 5,617,500
16. I note the arithmetic error and correct it according.
17. With this error corrected, the sum of the total award is
 $9,712,500 + 306,250 + 306,250 + 3,010,875 + 5,000,000$
 $= 18,335,895/=$
18. It is true that this Court made a mathematical error calculating the award. I therefore find the prayer for review is warranted.
19. I therefore review my Judgment at Paragraph 41 (2) so that the total tabulated is kshs.9,712,500/= and not 5,617,500/=
20. I also correct the Grand Total after award at (6) to read 18,335,895/= instead of 14,240,875/=
21. The rest of the Judgment remains undisturbed.
22. There will be no order of costs on this application.

RULING DELIVERED VIRTUALLY THIS 19TH DAY OF MAY, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE



In the presence of:-

Gatu Magana for Petitioner – present

Respondent – absent

Court Assistant - Fred

