



**Nbogho v National Water Conservation & Pipeline Corporation (Cause
878 of 2013) [2022] KEELRC 1582 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1582 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 878 OF 2013
MN NDUMA, J
JUNE 2, 2022**

BETWEEN

MIRIAM CHARI NBOGHO CLAIMANT

AND

**NATIONAL WATER CONSERVATION & PIPELINE
CORPORATION RESPONDENT**

RULING

1. The Claimant/Applicant brought a Notice of Motion application dated 12th April, 2021 praying for orders:-
 1. That the Court be pleased to review the judgment dated 12th October, 2018 and delivered on 26th October, 2018.
 2. Prayer (ii) of the said judgment to read Kshs 793,161.00 instead of Kshs 712,484.00.
 3. The claimant be awarded an amount of Kshs 54,98,849.60 in terms of prayer (iii) of the judgment.
 4. Costs of the application.
2. The application is on the grounds that there is an apparent arithmetical error on the face of the judgment in that the amount of reimbursement add up to Kshs 793,161 and not Kshs 712,484.
3. That the claimant was awarded benefits she had forfeited on account of unlawful termination which the claimant has now tabulated to be Kshs 54,898,849.60.
4. The Court had already awarded the claimant compensation for unlawful dismissal in the sum of Kshs 1,423,260 being equivalent of 12 months' salary in compensation.



5. The arithmetical error is said to arise from voucher 07875 of 16th October, 2011 for Kshs 655,161 and Imprest Surrender Form 1AF No. 397 of 15th September, 2020 and the two reimbursements added together amount to Kshs 793,161 and not 712,484, which was a genuine error by the judge.
6. The benefits claimed are set out in the application to comprise salary that would have been earned by the claimant from the date of dismissal to the date of retirement, 12 years down the line.
7. The application is opposed by grounds of opposition dated 23rd June, 2021. The claimant filed written submissions followed by the respondent. The issues for determination are: -
 - (i) Whether the award of Kshs. 712,484 is an arithmetical error that may be corrected to Kshs. 793,161 under the ‘Slip Rule’ in terms of Rule 33 of *Employment and Labour Relations Court (Procedure) Rules*, 2016.
 - (ii) Whether the claim for Kshs. 54,898,849.60 is misconceived and *res judicata*.
8. The Court at the outset notes that the application is visited with inordinate delay having been filed on 2nd April, 2021 and the Judgment sought to be reviewed was delivered on 26th October, 2018 about two years and seven months’ delay.
9. The Court at paragraph 20 of the Judgment found that the claimant was not paid Kshs 655,161 arising from payment voucher No. 0xxxx and Kshs 138,000 arising from Imprest Surrender Form 1AF No. 3xx.

The Court stated: -

“Both totaling Kshs 712,484.” The Court went ahead and awarded the claimant Kshs. 712,484. This is an error apparent on the face of the judgment. The two figures add up to a total of Kshs 793,161. The Court reviews its judgment accordingly in terms of Rule 33 of *Employment and Labour Relations Court (Procedure) Rules*, 2016 and awards the claimant Kshs 793,161 instead of Kshs 712,484. That correction is deemed part of the judgment.
10. With regard to the prayer that the Court awards the claimant Kshs 54,898,849.60, this prayer emanates from a serious misinterpretation of the Judgment of the Court by the claimant. The issue of award of compensation and or general damages for unlawful dismissal of employment was fully determined by the Court in its judgment. At page 14 and 15 of the Judgment, the Court considered all the relevant factors before granting the claimant 12 months’ salary as compensation for the unlawful summary dismissal. In arriving at this decision the Court specifically stated: -

“The claimant lost the benefit of salary increments and future salaries that resulted from the dismissal.”
11. It is clear that the matters now being raised by the claimant were taken into account in awarding her compensation and the matter is *res-judicata* and the Court *functus officio*. The Court specifically referred to other benefits which may have been forfeited by fact of the summary dismissal but had not been specifically pleaded in the suit. The Court referred to pension and/or gratuity which may have become payable once the dismissal was declared unlawful. The claim brought by the claimant is not for pension or gratuity that may have become payable arising from Order III of the Judgment at page 15.
12. Accordingly, the prayers for review of the Judgment in this respect lack merit and are dismissed for being *res judicata* and the Court *functus officio* in that regard.



13. In the final analysis, the judgment of the Court dated 12th October, 2018 and delivered on 26th October, 2018 is corrected by replacing Kshs. 712,484 at paragraphs 20(ii) and 31 (ii) of the Judgment to read Kshs. 793,161 and the amount is awarded accordingly.

14. It is so ordered.

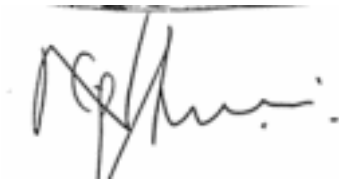
DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JUNE 2022.

MATHEWS N. NDUMA

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, this Ruling has been delivered to the parties online with their consent. 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 18 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.



Appearance:-

Mr. Khalware for Claimant/Applicant

Mr. Nyamu for Respondent

Ekale – Court Assistant

