



REPUBLIC OF KENYA



KENYA LAW
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**Muigai v Murban Movers (Cause 2175 of 2015)
[2022] KEELRC 1293 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1293 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2175 OF 2015**

**MN NDUMA, J
JULY 7, 2022**

BETWEEN

JAMES MWANGI MUIGAI PLAINTIFF

AND

MURBAN MOVERS RESPONDENT

RULING

1. The applicant by a notice of motion dated January 14, 2022 prays for an order that: -
 1. The Court be pleased to vary and/or review the judgment issued on May 6, 2020 by Hon. Justice Abuodha to the extent requiring the claimant to clear with Beni Station in Congo.
 2. Costs of the application.
2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of James Mwangi Muigai to wit; that the Court issued a judgment in which it required the applicant to travel to Congo and clear with the office before the balance of the terminal dues could be paid. That the applicant travelled to Beni Congo thereafter only to be informed that the office had been closed.
3. That the applicant visited the local offices of the respondent but was not assisted and on the second visit he was denied access.
4. That it is in the interest of justice that the application is granted to help finalise the matter.



5. The application is opposed vide a replying affidavit of Vishal Somaia, the Managing Director of the respondent who says he is familiar with the final orders of the Court to wit;

16. In conclusion the Court orders that the respondent pays to the claimant the agreed terminal dues after the claimant satisfactorily clears issues at Beni Station where he served prior to separating with the Respondent.”

6. That the respondent’s advocates on January 6, 2021 wrote to the claimant’s advocates enquiring when the claimant will be available for clearance, so that his dues could be released.

7. That on January 8, 2021, the claimant visited the respondent’s offices and was informed to provide Local Purchase Orders (LPOs) and invoices for the two accounts that he was dealing with at Beni Station so that the respondent could satisfactorily clear him. The two accounts in dispute were: -

(a) UNHCR (Oxfam) USD 5133

(b) ICCN Account USD 6298

8. That the claimant left and did not return.

9. That on January 19, 2021, the respondent wrote a letter to the claimant through his advocates informing him, that he needs to clear with them so that his dues could be released. That the said letter was never responded to. That these issues were part of the suit and are mentioned in paragraph 10, 12 and 15 of the judgment.

10. That the claimant has not satisfactorily cleared pending issues with the respondent as directed by the Court and therefore, the respondent cannot release his terminal dues until the pending issues of the two accounts are resolved.

11. That the respondent is ready and willing to release the claimant’s dues when the claimant satisfactorily explains and provides documentation of the two accounts. That the application lacks merit and it be dismissed.

12. The parties filed written submissions which the Court has carefully considered together with the judgment of the Court and the depositions by the parties.

13. Review of a judgment delivered by this Court is governed by Section 16 of the *Employment and Labour Relations Court Act*, No. 18 of 2014 which stipulates that; -

“The Court shall have the power to review its judgments, awards, orders or decrees in accordance with the Rules.”

14. Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 provides that: -

“(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
- (e) For any other sufficient reason.”

15. The applicant has not placed the Notice of Motion application under any of the provisions of rule 33(1) (a) to (d).

16. The Court is only left to speculate under which particular rule the application has been brought.

17. The Court has carefully studied the judgment of the Court and at paragraphs 12 and 13, the Court addresses itself to the issue of payment of terminal benefits of the claimant thus; -

12. The respondent on its part did not deny or refuse to pay the claimant the balance of his terminal dues. The respondent’s position was that there were pending issues from DRC Congo where the claimant was based at the time of termination which he needed to clarify before the balance of terminal benefits could be paid. According to the respondent this was a standard company procedure.

13. The claimant did not come clear in his pleadings and evidence about this issue of clearance from Beni station in DRC Congo where he was based at the time of termination. He did not allege or demonstrate he cleared as required by the respondent yet the latter still refused and/or ignored to pay his dues.

18. The Court in its conclusion, then went on to find at paragraph 16: -

“In conclusion, the Court orders that the respondent pays to the claimant the agreed terminal dues after the claimant satisfactorily clears issues at Beni Station where he served prior to separating with the respondent. The claim for unfair termination is therefore found without merit and is hereby dismissed with no order as to costs.

19. In the Court’s considered view, the Court granted the claimant an award payable only upon resolution of matters not determined by the Court. The claimant was left at the mercy of the respondent with a judgment that did not delineate the entitlement of the claimant with any clarity or certainty.

20. The application by the claimant for review cannot cure the void left in the judgment and ought to have filed an appeal to determine the issue now sought to be resolved by way of an application for review.

21. In my view and guided by the Court of Appeal decision on this matter to wit; in *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 Others* [2020] eKLR the Court addressing itself on these provisions observed that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law... In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on



the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. “

22. In *Sadar Mohammed v Charan Singh* EA 1963, it was held that: -

“any other sufficient reason refers to grounds analogous to the other two, for example error on the face and discovery of new matter”

23. The Court finds that there are no sufficient reasons to review the judgment of the Court. Rather, this Court is functus officio on the matters already determined by this Court and only the Court of Appeal may resolve any dissatisfaction by any party with the decision of the Court.

24. Accordingly, the application is dismissed for lack of merit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 7TH DAY OF JULY, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Kinyanjui for Claimant/Applicant

Mr. Anyona for respondent

Ekale – Court Assistant

