



**Njogu v Ramani Warehouse Limited (Cause E6546 of 2020)
[2022] KEELRC 4018 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4018 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6546 OF 2020
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

BEN MURAGE NJOGU CLAIMANT

AND

RAMANI WAREHOUSE LIMITED RESPONDENT

RULING

1. The court made a ruling in this matter, dated April 8, 2021.
2. The orders were that: that the respondent is restrained from acting on the letter sending the claimant away on unpaid leave, received by the claimant on December 1, 2020; the claimant shall report back to work immediately; the respondent shall pay to the claimant withheld salary for the period of unpaid leave, at the rate paid before sending the claimant on unpaid leave; and parties are free to terminate the contract in accordance with the *Employment Act*.
3. The claimant was invited back to work as ordered. The Respondent further invited the claimant to a disciplinary hearing on April 24, 2021. He was alleged to have falsified his letter of employment. The claimant did not attend hearing. He was summarily dismissed on April 26, 2021.
4. He presented an appeal on May 8, 2021. The appeal was heard in his presence, and the decision dismissing the claimant upheld.
5. On April 29, 2021, the claimant signed a discharge certificate, upon receiving Kshs 297, 443 from the respondent. The certificate states that the claimant has no further claim whatsoever against the respondent, relating to his employment. It was confirmed that the employment contract had been terminated.



6. Surprisingly, the claimant filed an application dated January 4, 2022, asking the court to review its ruling of April 8, 2021 and clarify what was meant by “ the salary withheld by the respondent for the period of unpaid leave.”
7. It is proposed that the unpaid salary be quantified in the amount of Kshs 1,717, 425. The application is based on the affidavit of the claimant, sworn on January 4, 2022.
8. It is opposed through the replying affidavit of Daniel M Kariuki sworn on January 21, 2022, and supplementary affidavit sworn on June 24, 2022. It is submitted that the claimant amended his statement of claim on June 21, 2020 and June 3, 2021, incorporating the prayer sought, in the application for review.

The Court Finds: -

9. The application for review is misplaced. Was the claimant’s salary at the time he was sent on unpaid leave not known? Was the period of unpaid leave not known to the parties? The claimant is seeking the court to clarify matters which ought to be within his knowledge.
10. He was issued the orders on April 8, 2021. Why wait until January 4, 2022, almost a year later, to seek clarification?
11. What he has not told the court, is that in compliance with the orders issued on April 8, 2021, the respondent recalled him, took him through a disciplinary process and dismissed him. He has not told the court that he was paid a sum of Kshs 297,443 which he acknowledged to be his final dues. He discharged the respondent from future claims relating to his employment. What then does he wish the court to review and clarify? Does not the claimant specifically plead the withheld amount in the further amended claim, at Kshs 946,800? The sum pleaded is at odds with the sum indicated in the application for review at Kshs 1,717,425. The court is not in a position to resolve this contradictory pleading for the claimant. By clarifying the amount, the court would be pre-empting claimant’s evidence on the subject. It is not the duty of the court to clarify evidence for the parties.
12. The application has no merit, in light of the actions taken by the parties after the ruling was delivered. It is not possible for the claimant to execute on the ruling dated April 8, 2021, in view of subsequent actions taken by the parties, and pleadings filed by the claimant. The best recourse is for the claimant to focus on prosecuting what remains of his claim, based on his amended and further amended statements of claim. He will have the opportunity to give evidence and support his prayers.

It is ordered: -

- a. The application for review is declined.
- b. The claimant shall prosecute the claim, and withhold any other action relating to the ruling dated April 8, 2021.
- c. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER, 2022.

JAMES RIKA

JUDGE

