



Bakery, Confectionery, Food Manufacturing and Allied Workers Union (K) v Bakers Oven Limited (Cause E369 of 2021) [2022] KEELRC 3946 (KLR) (20 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3946 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E369 OF 2021
MA ONYANGO, J
SEPTEMBER 20, 2022
BEFORE HON. LADY JUSTICE MAUREEN ONYANGO**

BETWEEN

**BAKERY, CONFECTIONERY, FOOD MANUFACTURING AND ALLIED
WORKERS UNION (K) CLAIMANT**

AND

BAKERS OVEN LIMITED RESPONDENT

RULING

1. By an application by way of a notice of motion dated February 4, 2022 the claimant seeks the following orders:
 - i. That this honorable court be pleased to review the final disposition of the judgment herein issued on December 10, 2021 as well as the extracted decree of even date and issued on February 3, 2022.
 - ii. That the cost of the application be provided for.
2. The grounds in support of the application are that there is an error on the face of the record as the court's final orders captured only part of what was awarded in the findings. Specifically, that at paragraphs 36, 37, 38, 39 and 40 of the judgment the court extensively analysed the remedies payable to the grievants and adopted appendix A of the memorandum of claim with the exception of compensation.
3. That the court further went on to exercise its discretion in its analysis of compensation payable to the grievant under paragraphs 37, 38, 39 and 40 of the claim by awarding 10 month's salary as compensation for employees who had served more than 10 years and 6 months compensation for employees who had served less than 10 years in employment.



4. That in the final disposition of the court, the court thereafter proceeded to render the final award in respect of compensation only in the sum of kshs 4,956,980.00 and overlooked the rest of the terminal benefits as tabulated in appendix A to the claim in respect of Notice Pay, Severance pay, Days worked and not paid and unpaid salary for days worked which were allowed under paragraph 36 of the judgment.
5. The supporting affidavit of Danchael Mwangure reiterates the grounds on the face of the application.
6. The respondent though served, did not respond to the application or attend court on the date of hearing of the application.
7. I have considered the application and the judgment and agree with the claimant that in the final orders in the judgment there is an error on the face of the record as the final orders capture only the award on compensation and erroneously omitted the awards for pay in lieu on notice, severance pay, service pay and unpaid salary for days worked as awarded at paragraph 36 of the judgment.
8. I am therefore satisfied that the claimant has proved that there is an error on the face of the record in the judgment. Under rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*, this court is empowered to review its judgments or orders on account of mistake or error apparent on the face of the record. Under rule 34 the court is empowered to cause any clerical mistake, incidental error or omission to be rectified either at the request of the parties or on its own motion.
9. Having confirmed from the record that there was an error and omission in paragraphs 40 of the judgment and in the table or schedule of payment, the same are rectified by setting aside the said paragraphs 40 and the table and replacing the same with the following paragraph 40:
 40. I therefore award the grievants the total sum of kshs 24,929,646.37/- as more specifically set out in the table below:
 41. Table on schedule of payments



NAME	GROSS PAY	YEARS OF SERVICE	NOTICE PAY	SEVERAL PAY	SERVICE PAY	UNPAID SALARY FOR DAYS WORKED	COMPENSATION (10 months for 10 years' service and above, 6 months for below 10 years' service)	TOTAL
Benson Gitau Kamanja	66,587.00	25	199,761.00	664,675.00	609,185.89	199,761.00	65,870.00	3,339,252.83
Margaret Mbaire Ngarachu	26,400.00	24	79,200.00	633,600.00	12,480.00	9,200.00	264,000.00	628,880.00
Symon Macharia Maina	26,400.00	24	79,200.00	633,600.00	12,480.00	9,200.00	264,000.00	628,880.00
John Mwangi Gatumu	26,750.00	22	80,250.00	588,500.00	68,883.38	380,250.00	267,500.00	545,258.33
Andrew Mathenge Wambugu	28,936.00	22	86,808.00	636,592.00	15,372.28	6,808.00	289,360.00	671,536.27
John Orondo Oloo	36,684.00	22	110,052.00	704,808.00	80,146.40	10,052.00	66,840.00	1,119,112.40
Joseph Mwakavi	28,936.00	22	86,808.00	636,592.00	15,372.28	6,808.00	289,360.00	671,536.27
Boniface Nzioki Nyamau	28,936.00	21	86,808.00	607,656.00	87,400.00	6,808.00	289,360.00	614,628.80



Austine Mwachai Mwalugha	34,089.0019	102,267.0047,691.0026,101.3002,267.0040,890.00,768,082.80
Reuben Mativo	26,530.0013	79,590.00344,890.0033,393.679,590.00265,300.00,062,968.67
James Thiongo Ngotho	28,936.0013	86,808.00376,168.0063,629.086,808.00289,360.00,159,369.07
Fredrick Odera	28,936.0012	86,808.00347,232.0035,657.686,808.00289,360.00,102,461.60
Mary Wambui Karanja	27,100.0011	81,300.00298,100.0088,163.381,300.00271,000.0079,213.33
Oliver Ochieng Miyere	28,530.009	85,590.00256,770.0048,211.085,590.00171,180.004,546.00
Samuel Karanja Gachoka	26,400.007	79,200.00184,800.0078,640.009,200.00158,400.0040,640.00
Godfrey Gahuru Kariithi	26,400.007	79,200.00184,800.0078,640.009,200.00158,400.0040,640.00
Charles Wangombe Wambugu	26,400.001	26,400.0026,400.0025,520.0026,400.00158,400.0076,320.00
Charles Warui Mwangi	26,400.001	26,400.0026,400.0025,520.0026,400.00158,400.0076,320.00
24,929,646.37		

42. The rest of the judgment remains undisturbed.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF SEPTEMBER 2022

MAUREEN ONYANGO

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 March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 had 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 1B 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.

MAUREEN ONYANGO

JUDGE

RULING ELRC NAIROBI Cause No. E369 of 2021

