



REPUBLIC OF KENYA



**Ogolla & 6 others v Ashut Engineering Limited (Appeal 1B of 2012)  
[2022] KEELRC 3942 (KLR) (20 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3942 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL 1B OF 2012  
MA ONYANGO, J  
SEPTEMBER 20, 2022**

**BETWEEN**

**EVANS OCHIENG OGOLLA ..... 1<sup>ST</sup> APPELLANT  
WILBERFORCE KWENDO ASKARI ..... 2<sup>ND</sup> APPELLANT  
JACKSON WAMBUA MUSYOKI ..... 3<sup>RD</sup> APPELLANT  
CHARLES OKANGO LITIEMA ..... 4<sup>TH</sup> APPELLANT  
RONALD NDIVO MWAYSA ..... 5<sup>TH</sup> APPELLANT  
CHRISPINE OKINYO ONONO ..... 6<sup>TH</sup> APPELLANT  
PAUL MUOKA ..... 7<sup>TH</sup> APPELLANT**

**AND**

**ASHUT ENGINEERING LIMITED ..... RESPONDENT**

**RULING**

1. *Vide* an application by way of notice of motion dated February 10, 2020 made pursuant to section 99 and 100 of the *Civil Procedure Act*, rules 3 and 34 of the *Employment and Labour Relations Court (Procedure) Rules* and all enabling provisions of the law, the applicant seeks that this court do issue an order correcting the accidental skip and or omission in the judgment delivered on the July 11, 2019 and that costs be provided for.
2. In the affidavit in support of the application sworn by Ochich Tlo counsel for the applicants, he states that judgment in the instant appeal was delivered on July 11, 2019. A copy of the judgment is annexed to the affidavit and marked TLO1.
3. He states that in the judgment the court inadvertently omitted the name of the 7<sup>th</sup> appellant which is not captured in paragraph 12 of the said judgment. That in the judgment the court found that all



the appellants were entitled to salary and allowances from January 2006 to July 2007, a period of 18 months. He prays that the error be corrected to give effect to the intention of the court when it passed the judgment. The application is not opposed.

4. The parties appeared in court on March 9, 2020 before my sister Wasilwa J. The record shows that counsel for the respondent, Mr Chite holding brief for Mr Wamwayi for the respondent stated:

“We agree the judgment had a genuine omission and should cover all the seven appellants.”

5. The court then made the following orders –

“In the circumstances the application dated February 10, 2020 is allowed as prayed.”

6. When Mr Ochich appeared before me he stated that the tabulation for the 7<sup>th</sup> appellant is similar to that of the 1<sup>st</sup> and 4<sup>th</sup> appellants at Kshs 11,142.44. I have perused the record and confirmed that the 1<sup>st</sup> appellant Evans Ochieng Ogola and the 4<sup>th</sup> appellant Charles Okango Litiema were all earning the same salary and house allowance as the 7<sup>th</sup> appellant being Kshs 1,060.00 for housing and Kshs 6,174.58 as basic pay. The award of the court was based on 18 months’ basic pay only being 6,174.58 x 18 = Kshs 111,142.44.
7. Paragraph 12 of the judgment dated 11<sup>th</sup> day of July 2019 is accordingly corrected and amended to read as follows –

1<sup>st</sup> Appellant Kshs 111,142.44

2<sup>nd</sup> Appellant Kshs 255,365.64

3<sup>rd</sup> Appellant Kshs 49,112.20

4<sup>th</sup> Appellant Kshs 111,142.44

5<sup>th</sup> Appellant Kshs 202,254.84

6<sup>th</sup> Appellant Kshs 111,142.44

7<sup>th</sup> Appellant Kshs 111,142.44

Kshs 951,302.44

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20<sup>TH</sup> 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 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 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 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**

