



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 302 OF 2015

ROSELINE OHANYACLAIMANT

v

EMERGENCY PLUS MEDICAL SERVICES.....RESPONDENT

RULING

1. Roseline Ohanya (the Claimant) sued Emergency Plus Medical Services (the Respondent) on 12 August 2015 alleging unfair termination of employment and breach of contract.
2. In a Judgment delivered on 16 July 2019, the Court found for the Claimant and awarded her Kshs 567,000/-.
3. On 27 November 2019, the Claimant moved the Court seeking orders
 - (a) THAT the Honourable Court do review its judgment dated 28/05/2019 and delivered on 16th July 2019.
 - b) THAT upon the grant of prayer (a) above, judgment be entered for the Claimant against the Respondent in the sum of Kshs 6,399,000/-.
4. The Respondent caused a replying affidavit sworn by its Managing Director to be filed in opposition to the Motion on 22 June 2020 and the Court took brief oral highlights on 18 November 2020.
5. In seeking review, the Claimant asserted that the Court used the factor of Kshs 540,000/- to award her 1 year's commission of Kshs 567,000/- but failed to multiply it with the 9 ambulances she had caused to be delivered by the Respondent. The Claimant sought a balance of Kshs 6,399,000/-.
6. Opposing the application, the Respondent contended that the Claimant was attempting to reopen the Cause because after judgment had been delivered, the parties had entered into a consent on costs and that the costs and the decretal sum had been settled.
7. The Court has considered the material placed before it and notes that the threshold for review is now well known that it needs no rehashing.
8. The Claimant presented the application for review about 3-months after judgment and 2-months after entering a consent on costs. There was no explanation of why an appropriate application for review was not made first.
9. The Court finds inordinate delay in the circumstances.
10. The Court has also looked at the Memorandum of Claim which was filed by the Claimant and more so the particulars of Claims/dues.
11. In paragraph 10 thereof, it was pleaded

10. Upon termination of the Claimant's employment the dues which she now claims from the Respondent

PARTICULARS OF CLAIMS AND/OR DUES

a) 10% commission X Kshs 540,000 X 12 months X 2 years Kshs 12,960,000

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|-------------|-----------------------|
| Less paid | Kshs 81,000/- |
| Balance due | Kshs 12,879,000/- Add |
| b) | Kshs 28,025/- |
| c) | <u>Kshs 28,500/-</u> |
| TOTAL | Kshs 12,935,525/- |

12. In the judgment sought to be reviewed, the Court agreed with the Respondent that the contract for payment of commission was to run for 1-year thus totalling Kshs 6,480,000/-. The Court then computed 10% of the Kshs 6,480,000/- and discounted it by the amounts already paid this arriving at a figure of Kshs 567,000/-.

13. The Court has reviewed the Claimant's written witness statement, documentary and oral evidence. There is no cogent evidence that she produced that she procured the leasing of 9 ambulances by County Government of Kisii or that the Court was in error in awarding commission in respect of 1 ambulance. Any error, if at all, in the view of the Court was in the drafting of the pleadings and leading of evidence.

14. The Court finds that the Claimant did not meet the test for review as contemplated by Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

15. The Motion is dismissed. No order on costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 27th day of January 2021.

Radido Stephen, MCI Arb

Judge

Appearances

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|-----------------|---|
| For Claimant | Mr. K'owino instructed by K'owino & Co. Advocates |
| For Respondent | Mr. Mbeche instructed by Obura Mbeche & Co. Advocates |
| Court Assistant | Chrispo Aura |