



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 251 OF 2018

(Before D.K.N Marete)

KENYA UNION OF COMMERCIAL FOOD &

ALLIED WORKERS.....CLAIMANT

VERSUS

KAMUGA/GAICHANJIRU FCS.....RESPONDENT

RULING

This is an application dated 25th November, 2020 and seeks the following orders of court;

1. *THAT this Application be certified urgent, service thereof be dispensed and same be heard exparte in the first instance.*
2. *THAT the Honourable Court do and hereby reviews its judgment delivered on 25th November 2019 to include the correct amount of Kshs.5,440,049.85 as per paragraph 4 of the claim*
3. *THAT the Honourable Court do and hereby finds that the total amount which was claimed in paragraph 4 of the claim is Kshs.5,440,040.85 and not Kshs.4,739,443.85 as indicated in the judgment which the court is invited to correct.*
4. *THAT the Honourable Court do issue any other order it deems fit to address the ends of justice.*
5. *Each party to bear own costs of this application.*

It is grounded as follows;

1. *THAT on 25th November 2019 the Honourable Court delivered a judgment as regards the claim placed before it which was failure to pay terminal benefits of 28 former employees.*
2. *THAT in its judgment, the Honourable Court ordered that the 28 employees be paid Kshs.4,739,433.85 as claimed in paragraph 4 of the claim.*
3. *THAT under paragraph 4 of the claim, the total amount claimed as balance is Kshs.5,440,049.85 which is the total balances outstanding and due for the 28 former employees.*
4. *THAT the Claimant/Applicant invites the Honourable Court to correct the judgment and issue final orders on the figures as found under paragraph 4 of the claim which is Kshs.5,440,049.85.*
5. *THAT under the circumstances it is only fair and reasonable that the Honourable Court reviews the judgment so that the figures in paragraph 4 of the claim are reflected under paragraph five of the judgment.*

The Respondent in opposition files the following as grounds of opposition;

- i) *The application is bad in law and does not lie.*

ii) *The applicant is seeking to appeal and overturn a judgment through the back door.*

iii) *There is no error apparent on the judgment as stated and the judgment is precise from the numbers implying the learned judge was fully aware.*

iv) *The Applicant is trying to hoodwink the court.*

v) *The Applicant should have preferred an appeal if dissatisfied.*

vi) *Time for filing a review has lapsed and there is no urgency.*

This application came to court *ex parte* on 1st December, 2020 when the court directed that the Respondent be served and files a response/reply in seven days with *inter partes* hearing being placed on 15th of December, 2020.

At the presentation during the said hearing, the parties were unanimous that the application be determined on the basis and merits of the pleadings. And there we are.

This is a simple application. The Claimant Union, which also doubles as the Applicants in the circumstances is only calling for a review of the judgment of the court in which an award was made at Kshs.4,739,443.85 instead of Kshs.5,440,049.85 being the amount of claim as per paragraph 4 of the claim.

The judgment of court issued an award in terms of paragraph 4 of the claim but erred in a computation of the same under the claim. This is as follows;

“This dispute ought not have come to court for the simple reason that the parties entered into an agreement at conciliation level and signed an agreement dated 18th April 2016. Absent any evidence of fraud, mistake or any factor that can vitiate a contract executed by willing parties, the court cannot impose its decision on the contract of parties. The Conciliator having brought parties together and having worked out the deal between them was not in a position to refer the dispute to court. It was resolved at conciliation and therefore the Claimant’s members being the 28 Grievants are to be paid the outstanding dues amounting to Kshs.4,739,443.85 as claimed under paragraph 4 of the Claim. Each of the 28 Grievants is to receive the balance owed as part payment was made in respect of a majority of them. As the Claimant delayed in procuring the services of the Ministry in resolving the dispute there will be no order as to costs.”

This application is occasioned by an error of computation. This is mere arithmetic. This court is enabled to deal with this under Order 45 Rule 1 (a) and (b) of the Civil Procedure Rules and also Rule 33 (1) (b) of the Employment and Labour Relations Court (Procedure) Rules, 2016 which enable it to review by a rectification of error(s) on the face of record.

The Respondent’s Grounds of Opposition have no basis and are merely evasive. These fail *in toto*.

I am therefore inclined to allow the application on the following terms;

i) That the amount of award shall be Kshs.5,440,049.85 being the cumulative total vide paragraph 4 of the claim.

ii) That each party bears their costs of the application.

Dated and delivered at Nyeri this 25th day of February 2021.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss Macharia for the Claimant Union/Applicant

2. Miss Macharia holding brief for Kimwere instructed by Kimwere Josphat & Company Advocates for the Respondent.