

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/338/2017

CITATION: STEPHEN LIMO VS THE B.O.M ST CECILIA GIRLS SECONDARY SCHOOL

RULING

By an application dated 19th November, 2020 the Claimant sought an order of review of the Court's judgement delivered on 28th November, 2019.

2. The application was based on the grounds among others that the Court upon delivery of judgement on 28th November, 2019 inadvertently did not address itself on all prayers and reliefs sought. According to the Claimant, the entire claim was uncontroverted.

3. At paragraph 2.15 of the statement of claim, the Claimant sought judgement for unpaid salary with effect from April, 2017. The Claimant further sought unpaid salary until hearing and determination of the suit. The Claimant further sought to be paid untaken leave for the years 2015, 2016 and 2017. The Claimant further sought general damages for mental torture due to unlawful suspension.

4. The Claimant though pleaded as above, did not lead any evidence during the trial to support the claims. For instance, the Claimant never alleged during the trial that he was not paid salary from April 2017 and for what period to justify the claim for Kshs. 49,005/=. No allegation was made during the trial that the Claimant for the period he worked, never went on leave.

5. The claim for unpaid salary until hearing and determination of the suit has no basis in law since Section 49 of the Employment Act caps the amount of compensation awarded to any successful litigant at twelve month's wages. The Claimant further did not come out clear or at all, in what way the suspension and allegation of theft of the phone caused him anger and mental torture.

6. It is indeed correct that the Court awarded the Claimant compensation for unfair termination of service and one month's salary in lieu of notice. That was what the Court felt, in law could be awarded. Although the Claimant now raises the issue of reinstatement, this was never pleaded. No evidence was led concerning the same during the trial hence the Court had no basis for making the award.

7. In conclusion, the Court has considered the application as presented and as of the view that the same borders on asking the Court to sit on appeal on its own judgement. The issues raised in the application are not matters for review. They are if errors, jurisdictional errors which the Claimant, if aggrieved by the judgement can raise an appeal.

8. The application is therefore found unmerited and is hereby dismissed with costs.

9. It is so ordered.

DATED AT ELDORET THIS 15TH DAY OF MARCH, 2021

Delivered at Nairobi this 15th day of March, 2021

SIGNED BY: HON. JUSTICE J. N. ABUODHA

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

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