



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO.381 OF 2015**

**ALLAN MWANGI MUTURI ..... CLAIMANT**

**VERSUS**

**KENYA AIRPORTS AUTHORITY .....RESPONDENT**

**RULING**

The claimant filed application dated 25<sup>th</sup> August, 2020 under Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 (the Court Rules) and seeking for orders that;

- a) *The court be pleased to review the salary amount from ksh.548, 541/= to Ksh.615, 968/= per month*
- b) *There be a recalculation of the amounts payable to the claimant*
- c) *Costs be in the cause.*

The application is supported by the claimant's affidavit and on the grounds that there was an omission by the claimant to provide the correct updated salary as at the time employment terminated which was ksh.615, 968 and a correct calculation is necessary to protect the claimant from any arising disparity at the Kenya Revenue Authority Portal. There shall be no prejudice against the respondent where the correct salary is paid. The application is filed without delay and only fair and just the orders sought be allowed.

In his affidavit, the claimant avers that judgement was delivered on 6<sup>th</sup> February, 2020 where his salary was adopted at ksh.548, 541 which was an omission as the due salary at the time employment terminated with the respondent was ksh.615, 968 as evidenced by KRA returns. This error be corrected for the proper calculation of his due salary and judgement amount.

In reply, the respondent filed Grounds of Opposition that the application is misconceived and devoid of merit and it has failed to satisfy the conditions for a review as per Order 45 Rule 1 and there is no basis for the court to exercise its discretion. The claimant has failed to demonstrate that his monthly salary was information that was not within his knowledge and this was news or that he suffered a disability before judgement was delivered and on this basis the application should be dismissed with costs.

Both parties filed written submissions.

On the application, affidavit and grounds of objections and submissions on record the single issue for determination is whether the court should allow a review of the judgement.

The foundation of a review of the court judgement is under Rule 33(1) of the Court Rules. An applicant seeking a review is required to address the following;

33. (1) *A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—*

*(a) If there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;*

*(b) On account of some mistake or error apparent on the face of the record;*

*(c) If the judgment or ruling requires clarification; or*

(d) For any other sufficient reason.

There must be discovery of a new matter or evidence which was not within the knowledge of the applicant and could not be produced at the time the order was issued. That there is a mistake on the record, there is need for clarification or there exists a sufficient reason to justify a review.

In his applicant, the claimant submitted that he is seeking for a review because *there was an omission to provide the correct updated salary as at the tie of termination. At the time he was being paid ksh.615, 968 per month.* That a review will protect him from any arising discrepancy at the KRA portal.

The claimant filed his Memorandum of Claim herein on 13<sup>th</sup> March, 2015. At paragraph 58 he sets out the special damages claimed with an application of Ksh.548, 541 as the monthly salary. This is replicated under paragraph (d) on reliefs sought at a salary of Ksh.548, 541.

In the judgement delivered on 6<sup>th</sup> February, 2020 the court at paragraphs 19 and 72 directly adopted the figures and salary amounts of Ksh.548, 541 adopted by the claimant in his pleadings and evidence.

The claimant has attached various documents to his application and relating to KRA returns for the year 2013; bank statements for the year 2013 all relating to a period before suit was filed and all old and available to him when his case was heard and closed and judgement rendered. Such matter is not new, does not requires any clarification and the figures pleaded were not in error as the claimant was well aware of the salary earned as at 13<sup>th</sup> March, 2015 when he filed suit. To apply the KRA returns and bank statement to review the tabulation of salary figures pleaded at this stage will be prejudicial to the respondent and shall not meet the ends of justice.

A review of court orders should be for the purpose of addressing a sufficient cause. It should not form a new cause of action after judgement. To allow new facts would be to allow a party to re-litigate a matter already adjudged as held in **Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR** and in **Kenya Engineering Workers Union v Steel Structures Limited; Kenya Building, Construction, Timber and Furniture Industries Employees Union (Interested Party) [2020] eKLR** where the court held that;

*An application for review may be allowed on any other “sufficient reason.” The phrase „sufficient reason? within the meaning of the above rule means analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. This position was illuminated in **Sadar Mohamed vs Charan Signh and Another** where the Court held that: -*

*“Any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter)2*

**Accordingly, the application dated 25th August, 2020 is found without merit and is hereby dismissed. Each party shall bear own costs.**

**DELIVERED IN OPEN COURT AT NAIROBI THIS 2ND DAY OF MARCH, 2021.**

**M. MBAR?**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

..... and .....