



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT

NAIROBI

CAUSE NO.1921 OF 2014

SOLOMON KIIGE NGECHACLAIMANT

VERSUS

CONSOLIDATED BANK OF KENYA LIMITEDRESPONDENT

RULING

The claimant filed application dated 14th September, 2020 seeking for orders that;

The court be pleased to order the respondent to pay the claimant the sum of Ksh.322, 385/= being interest unpaid and due.

Costs of the application.

The application is supported by the claimant's affidavit and on the grounds that;

- a. *The decree in this matter ha material errors in terms of calculation of interest which need amendment to the decree;*
- b. *The terminal dues awarded are Ksh.262, 696.30; Ksh.34, 824/- + Ksh.109, 115/- + Ksh.118, 757.30 as per page 14 of the judgement.*
- c. *That the interest on the terminal dues is from 18th July 2000 (date of filing suit) calculated to the date of 1st July 2018 when the decretal amount was paid as follows: $Ksh.262, 696.30 * 12/100 * 6552 \text{ days}/365 = Kshs.565, 869$ the number of days used here is the number of calendar from 18th July 2000 to date of the decree.*
- d. *The days above have been calculated as follows: 18th July 2000 – 31st December 2000 – 181 days and year 2001 – year 2007 – 6205 days. The sum of these days is 166+181+6205 days.*
- e. *The damages awarded is $ksh.417, 888/= * 12/100 * 366 \text{ days}/365 = Ksh.48, 910$. The number of days used here is the number of calendar days from 29th June 2017 to 1st July 2018.*
- f. *From the forgoing, the total interest as to the date of the decree is $Ksh.614,779/= (Ksh.565,869/- + Ksh.48,910/=)$*
- g. *The figure calculated of interest in the decree is $Ksh.293,394/=$ which is misleading since it creates a shortfall of $Ksh.322,385/= (Ksh.614,779/= \text{ minus } Ksh.293,394/=)$*
- h. *No prejudice will be suffered by the respondent in rectifying the arithmetic errors on the decree in this matter.*

In reply, the respondent filed the Replying Affidavit of Rose Mukoba the manager, human resource department and who avers that judgement herein was entered in favour of the claimant on 29th June, 2017 where he was awarded Ksh.591,210 plus interests and costs of the suit. the costs were assessed and the Decree and Certificate of costs were issued without the involvement of the respondent.

The claimant excited the decree against the respondent and warrants of attached issued with the decretal sum being Ksh.591,210, costs at Ksh.196,988, interests on the decretal sum Ksh.293,394, further costs Ksh.940 and court collection fee of Ksh.1,500 all total Ksh.1,084,042.

The respondent settled the entire decretal sum which was acknowledged. However vide letter dated 13th May, 2019 the claimant served

demand expressing that they had noted an error in the calculations of the interest and there was a deficit of Ksh.485, 354.91. the judgement award had long been settled and the new demands are not justified.

On 12h March, 2021 the claimant invited the respondent to take a hearing date for application dated 14th September, 2020 and seeking for payment of Ksh.322, 385 alleged to be interest unpaid which was a different amount as earlier claimed.

The current application is an afterthought and does not meet the threshold under section 16 of the Employment and Labour Relations Court Act and the Rules thereto, the court stands functus officio ad the application should be dismissed with costs.

Parties filed written submissions which are put into account and the single issue for determination is whether the court should order the respondent to pay the claimant the sum of Ksh.322,385/= being interest unpaid from the judgement delivered n 29th June, 2017.

The court is allowed under the provisions of section 16 of the Employment and Labour Relations Court Act, 2011 to review its orders pursuant to the provisions of Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. Where there is discovery of new matter, a mistake on the record, need for clarification or for any good cause the court is allowed to review its orders.

On 29th June, 2017 the court delivered judgement herein in favour of the claimant and issued the following awards;

- a) Notice pay Ksh.34,824;
- b) 94 days of leave ksh.109,115;
- c) Damages Ksh.417,888;
- d) Pension Ksh.118,757.30; Total Ksh.680, 584; Less paid Ksh.89, 374; Balance due ksh.59, 210

The claimant was also awarded costs which the Taxing master assessed at Kh.196, 988;

The court also awarded interests from the date of filing suit on 18th July, 2000 to the date of judgement and which was assessed at Ksh.293, 395.

The Taxing master further assessed the further costs at ksh.950 and court collection costs at ksh.1, 500.

Total dues to the claimant are Ksh.1, 084,042.

This amount was paid and acknowledged by the claimant. This is the essence of page 14 of the judgement, the final orders of the court.

The claimant's case is that there was error in calculating his interests. That *Ksh.262,696.30; Ksh.34,824/- + Ksh.109,115/- + Ksh.118,757.30 as per page 14 of the judgement* were the total dues is not correct as the judgement is clear to the extent that the only awards made related to notice pay Ksh.34,824; 94 leave days at Ksh.109,115; damages at ksh.417,888 and pension at Ksh.118,757.30 only.

To calculate the award otherwise is incorrect.

Costs and interests due as awarded in the judgement are matters well addressed by the Taxing Master and a ruling delivered. A Decree issued together with Certificate of Costs. This is the true record of tabulation of dues. the claimant has no legal mandate to make own tabulations.

Upon the issuance of the Certificate of Costs, the claimant cannot turn back and allege that his intrusts were not calculated properly.

Indeed upon the tabulation of the decretal sum, such should have been subject to the provisions of section 49 of the Employment Act which directs for the deduction of statutory dues. where this as factored, it would reveal that the claimant was overpaid.

Accordingly, the claimant having been fully paid the total judgement sum as of 29th June, 2017 he cannot be found to state that he discovered new matter that was not available to him then, that there has seen a mistake on the record or that he requires clarification of the judgement after the lapse of over three (3) years. such would negate the principle of *justice aids the vigilant and not the indolent*.

The application fails the threshold of section 16 of the Employment and Labour Relations Court Act, 2011 read together with Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016. The court finds no matter for review, amendment or clarification.

The inordinate delay is apparent in this case.

Accordingly, application dated 14th September, 2020 is hereby dismissed with costs to the respondent.

DELIVERED AT NAIROBI IN OPEN COURT THIS 18TH DAY OF NOVEMBER, 2021.

M. MBARU

JUDGE