



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC JUDICIAL REVIEW NO 4 OF 2015

ABDALLA MOHAMED MCHINGA.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

R U L I N G

1. By a Notice of Motion dated 5th July, 2021 the Claimant/applicant through the firm of Olaly Cheche sought the following Orders; -
 - a) **That this application be certified as urgent and its service may be dispensed in the first instance.**
 - b) **That this Honourable Court be and is hereby pleased to review its orders and decree made on the 25th Day of March 2021.**
 - c) **That the cost of this application be in the course.**
2. The application is supported by grounds herein and the supporting Affidavit of **Abdalla Mohamed Mchinga** the claimant/ Applicant herein.
3. The claimant avers that the Honourable Deputy registrar has persistently failed to include fully, the matter to be included in the tabulations as envisaged in the judgement thus leading to a miscarriage of justice.
4. He avers that there is a marked difference between this Court's ruling and the judgment of Justice Ongaya delivered on the 4th April, 2014.
5. He stated that the affidavit of Muendo Muli only addressed the issue of demotion and left out the issue of suspension and interdiction which issue were equally ignored by the deputy registrar while making her calculations.
6. He therefore, maintained that this Court's decision and the deputy registrar's decision are not in tandem with the judgment of this Court delivered by justice Byram Ongaya. He thus prayed for the same to be reviewed to conform with the said judgment.
7. The Respondent opposed the application and filed a grounds of opposition on the 26th July, 2021. These grounds of opposition are as follows; -
 - a) The Application is res judicata, and thus cannot be entertained by the Honourable Court.
 - b) The Application offends Order 45, rule 6 of the Civil Procedure Rules, 2010, barring of subsequent applications to a Review Order.
 - c) The Application is fatally defective and incurable as it seeks to review an order made on an application for a review of a decree or order passed or made on a review.
 - d) The court has since become functus officio, and thus lacks the judicial authority to entertain this Application.

e) The entire Application as laid is scandalous, frivolous, vexatious and a clear definition of abuse of Court Process.

f) On the foregoing the Application is incurably defective, incompetent, misconceived and a proper candidate for dismissal with costs to the Respondent.

8. This court directed parties to dispose of the application by way of written submissions which the Applicant filed on the 25th August, 2021 while the Respondent did not file any submissions.

Applicant's submissions.

9. The applicant submitted that the deputy registrar based her finding on the affidavit of Muendo Muli which indicated that the claimant was paid Kshs 7,926 when in the payslips produced before court, the claimant was paid Kshs. 5,571 marking a difference of Kshs 2,355 which the claimant wants to be factored in the tabulations.

10. It was submitted also that the deputy registrar has failed to address the issue of interdiction, suspension and reduction of rank and only addressed the amount he should have been paid which was based in an erroneous presentation by Muendo Muli.

11. The claimant contends that the interest payable was supposed to be at court rate from 17th July, 2012 to payment in full which has never been paid to date.

12. On whether the Application herein is res judicata, the Applicant maintained that the issue in dispute has never been resolved by this court therefore the issue is not res judicata. He argued further that this Court has jurisdiction to determine this review and that it is not functus officio as alleged by the Respondent.

13. He therefore prayed for tabulations of the said dues and the court reviews its orders of 25th March, 2021.

14. I have examined the averments of the parties herein. I note that the applicant had previously filed an application for review dated 17th December, 2020 which this court considered and rendered a Ruling on 25th March 2021 declining to grant the orders sought.

15. The applicant has filed yet this application seeking review on same issues already declined i.e. suspension and interdiction. Under Order 45 Rule 6 of the Civil Procedure Rules, this court has no jurisdiction to revisit the application for review having previously determined a similar application before.

16. The application is indeed res Judicata and lacks merit.

17. I dismiss it accordingly with costs.

RULING DELIVERED VIRTUALLY THIS 9TH DAY OF NOVEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Wanjeri holding brief for Nyambura for respondent – present

Claimant in court – present

Court assistant - Fred