



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 985 OF 2014**

**GRACE AKINYI AHAWO.....CLAIMANT**

**VERSUS**

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

**RULING NO. 5**

1. Before the Court is a motion dated 27 February 2020 in which the Claimant seeks orders

1. **THAT** this Honourable Court do review/or set aside its order of 31<sup>st</sup> January 2020 directing that the decretal sum due is Kshs 65,546/-.

2. **THAT** this Honourable Court do issue an order that the Respondent do pay the Claimant the balance of the decretal sum of Kshs 71,483/20 within 7 days or any other time-limited by Court.

3. **THAT** the said balance be attached by way of order absolute in the account by the garnishee in the Judgment debtors name, Kenya Airport Authority account No. 1001206024 to satisfy the balance of the decretal sum of Kshs 71,483/20 together with garnishee cost of Kshs 15,000/- in non-compliance of order No. 2 above.

4. **THAT** costs be provided for.

2. The grounds/reasons which were advanced in support the application were that the Claimant had not tabulated the amounts due by 11 June 2019 when filing the garnishee application; that the Respondent had initially made payment of Kshs 625,655/- leaving a balance of Kshs 137,029/- and that out of this later balance, the Respondent made a payment of Kshs 65,546/- (after Court order on 31 January 2020) thus leaving a balance of Kshs 71,483/20.

3. The Respondent filed Grounds of Opposition to the motion and its submissions on 16 June 2020.

4. According to the Respondent, the application was an abuse of the court process, vexatious and frivolous and did not meet the review test as envisaged by Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016.

5. Taking the arguments further, the Respondent contended that the motion did not set out or disclose any newly discovered matter of evidence which could not have been discovered by the exercise of diligence and that the addition of interest on the balance claimed could not be a discovery.

6. Further, the Respondent contended that the Court had dealt with previous applications wherein the Claimant had raised similar issues and the Claimant was thus revisiting questions the Court had addressed. The application, it was asserted, was *res judicata*.

7. The Court has considered the rival facts and submissions placed before it by the parties. The Court agrees with the Respondent that the application does not meet the review threshold.

8. Among the new items introduced by the Claimant was interest on the decretal sum.

9. In the view of the Court, that item should have been presented by the Claimant when filing the earlier applications.

10. Further, this is not the first review and/or execution application filed by the Claimant.

11. Lastly, if at all, the Court made a mistake in its Ruling No. 4 delivered on 31 January 2020, such a mistake should be the subject of appellate jurisdiction, as there is no apparent error demonstrated on the face of the record.

12. The motion is dismissed with costs to the Respondent.

**Delivered through Microsoft teams, dated and signed in Nairobi on this 6<sup>th</sup> day of August 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Mr. Ojienda instructed by Ojienda & Co. Advocates

For Respondent                    Ms. Kanyiri instructed by the Federation of Kenya Employers

Court Assistant                    Judy Maina