



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 56 OF 2015**

**IN THE MATTER OF: CONTRAVENTION OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ALLEGED BREACH OF RIGHTS AND FUNDAMENTAL FREEDOMS**

**AND**

**IN THE MATTER OF: ARTICLES 22(1) AND 23 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ETHICS AND ANTI-CORRUPTION COMMISSION ACT**

**BETWEEN**

**ROBERT KARANI.....PETITIONER**

**v**

**ETHICS AND ANTI-CORRUPTION COMMISSION.....RESPONDENT**

**RULING**

1. In a judgment delivered on 29 May 2020, the Court found that the termination of the Petitioner's employment was unlawful and awarded him the equivalent of 5-months' salary as compensation being the duration which had been left to lapse of the contract.
2. On 18 June 2020, the Ethics and Corruption Commission filed a Motion seeking review of the compensation on the basis that there was an error on the face of the record as the Petitioner had 3-months 7 days of his contract remaining.
3. The Petitioner filed a replying affidavit sworn on 29 July 2020 in opposition to the Motion and on 4 August 2020, the Court directed the parties to file and exchange submissions.
4. The Respondent filed its submissions on 9 September 2020 while the Petitioner filed submissions dated 22 September 2020.
5. Advancing the argument that there was an error on the face of the record, the Respondent contended that the intention of the Court at paragraph 79 of the Judgment was to award the equivalent of the remuneration the Petitioner would have earned had he served his contract in full and that the balance of the contract was 3-months and 7 days and thus the total compensation should have been KShs 403,000/-
6. The Petitioner urged the Court to decline the Motion on the ground that contrary to the requirement by Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016, the Respondent had not exhibited a copy of the Judgment and/or decree sought to be reviewed.
7. Citing the Supreme Court in *Telcom Kenya Ltd v John Ochanda & 996 Ors* (2015) eKLR, the Petitioner urged that the failure to exhibit the copy of the judgment and/or decree made the application fatally defective.
8. The Respondent was of a contrary view *and relying on* Court of Appeal authority of *Sheikh Ali Taib v George Ellam Wekesa & Ar* (2017)

eKLR submitted that the failure to attach a copy of a judgment to a review application was not fatal but an irregularity which is not fatal.

9. The Supreme Court was not addressing its mind to the failure to attach a copy of the judgment to a review application in the *Telcom Kenya Ltd* case (supra) and therefore this Court does not find the authority as aiding the Petitioner's case.

10. This Court is aware of the inconsistent positions taken by the Courts on the effect of a failure to exhibit a copy of the judgment to a review application and leans towards the position taken by the Court of Appeal in *Stephen Boro Gitiha v Family Finance Building Society & 3 Ors (2008) eKLR* that

**The overriding objective overshadows all technicalities, precedents, rules and actions which are in conflict with... and whatever is in conflict with it must give way. A new dawn has broken forth and we are challenged to reshape the legal landscape to satisfy the needs of our time...In this case, the plaintiff's counsel did annex a copy of the judgment which is sought to be reviewed. The extraction of a decree or order sought to be reviewed no doubt stems from the judgment and is purely a procedural omission which should not be used to impede access to justice...**

11. The Petitioner also challenged the admissibility of the supporting affidavit on the basis that it was sworn by the advocate and not the Respondent.

12. In the view of the Court, the matters deposed to in the affidavit meet the legal threshold for an affidavit sworn by an advocate as they are based on facts which are discernible from the Judgment.

13. On the merits of the Motion, the Court has reviewed the Judgment and more so paragraph 79 and agrees with the Respondent. There was an arithmetical error in computing the balance of the Petitioner's contract.

14. In the circumstances, the Court reviews the Judgment and assess compensation payable as the equivalent of 3-months and 7 days gross salary being Kshs 403,000/-.

**Delivered through Microsoft teams, dated and signed in Nairobi on this 23<sup>rd</sup> day of October 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner Mr Ramadhan instructed by Magee Wa Magee & Co. Advocates

For Respondent Ms. Kibogy, Attorney, Ethics and Anti-Corruption Commission

Court Assistant Lindsey