



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 305 OF 2015

BERNARD OKELLO OOKO.....CLAIMANT

VERSUS

MBAGATHI VIEW ACADEMY.....RESPONDENT

RULING

1. On 20.1.2020 I delivered a judgment in this case in which I awarded the claimant damages totalling to Kshs. 161,538.46. Thereafter, the claimant filed the Notice of Motion dated 24.7.2019 seeking for review of the judgment entered on 28.2.2020 by Radido J. The application is based on the grounds set out in the body of the motion and the supporting affidavit sworn by the claimant's counsel Mr. Simon Namada.

2. In brief, the ground upon which the application stands is that the Court made errors by miscalculating the amount awarded as compensation and leave and thereby indicated a lower sum than the one granted. The respondent has not opposed the application.

3. After careful consideration of the application and the supporting affidavit, I find that the application is misconceived as it seeks review of a non-existent judgment by Radido J dated 28.2.2020. I therefore dismiss it with no costs.

4. However, the claimant's application has drawn my attention to an arithmetical and clerical errors which I made in paragraph 17 of my judgment dated 20.1.2020. Having granted the claimant 8 months' salary as compensation for unfair termination in paragraph 12 and leave for 8 years in paragraph 14 of the judgment, the final award would have been higher than the amount stated in paragraph 17. Based on a salary of Kshs.12000, I miscalculated the compensation as Kshs. 72,000 instead of Kshs. 96,000. On the other hand, I recorded the leave award as 7753.46 instead of Kshs. 77,538.46.

5. The issue for determination is whether the Court should *suo moto* review and rectify the arithmetical errors on its judgment dated 20.1.2020. **Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2016** provides as follows: -

“34. The Court shall, either at the request of the parties or on its own motion, cause any clerical mistake, incidental error or omission to be rectified and shall notify the parties of such rectification.”

6. In exercise of the said mandate, I proceed to rectify the arithmetical

as well as clerical errors on paragraph 17 of the judgment dated 20.1.2020 to read as follows:

- a) Notice Kshs. 12,000
- b) Compensation (8 x Kshs. 12,000) Kshs. 96,000
- c) Leave 21/26 x 8x Kshs. 12,000 Kshs. 77,538.46

- Total Kshs. 185,538.46

7. The rest of the judgment remains as before. The Deputy Registrar of this Court is directed to formally notify the parties of the above rectification of the judgment.

Dated and delivered at Nairobi this 23rd November, 2020.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE