



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 227 OF 2013**

GILBERT KIPTOO KIPKOECH.....1<sup>ST</sup> CLAIMANT/RESPONDENT  
JOSEPH ORORA AERA.....2<sup>ND</sup> CLAIMANT/RESPONDENT  
NGUI MUINDI.....3<sup>RD</sup> CLAIMANT/RESPONDENT  
FRED G. ONDIEK.....4<sup>TH</sup> CLAIMANT/RESPONDENT  
PETER KYALO.....5<sup>TH</sup> CLAIMANT/RESPONDENT  
PETER KIPLETING OMOSA.....6<sup>TH</sup> CLAIMANT/RESPONDENT  
KENNEDY SIMIYU FWAMBA.....7<sup>TH</sup> CLAIMANT/RESPONDENT  
LAWRENCE BOSIRE.....8<sup>TH</sup> CLAIMANT/RESPONDENT  
GIDEON KEMOBI.....9<sup>TH</sup> CLAIMANT/RESPONDENT  
HARON MONARI TINEGA.....10<sup>TH</sup> CLAIMANT/RESPONDENT  
RAMASHAN KIMUTAI.....11<sup>TH</sup> CLAIMANT/RESPONDENT  
THOMSON AGRI MOKAYA.....12<sup>TH</sup> CLAIMANT/RESPONDENT  
DUKE OMBAKI KIBERA.....13<sup>TH</sup> CLAIMANT/RESPONDENT  
DICKSON KORIR.....14<sup>TH</sup> CLAIMANT/RESPONDENT

**VERSUS**

**ELDORET GRAINS LIMITED.....RESPONDENT/APPLICANT**

**RULING**

1. The judgment creditor filed an application for review of the judgment of the Court dated 6/12/2018. The application is dated 12/8/2019 and was filed on the even date about 11 months from the date of judgment. The decretal sum in favour of the Claimant/applicant is Kshs.1,345,976.

2. In its judgment the Court clearly stated that it would not grant an Order of Costs in the matter. The Court was therefore deliberate on the its finding and this was not an omission and/or an error on the face of the record. The Court allowed interest on the decretal sum at 14% from the date of judgment.

3. The Court has a discretion to make an Order for costs or not provided the discretion is exercised judiciously.

4. The Court considered the hefty award made to the Claimant as against the respondent and used its discretion not to award

costs. This practice is not uncommon in the Employment and Labour Relations Court which has an equitable jurisdiction.

5. The Court has considered the rival arguments and submissions by the parties and is not persuaded that there is any justification to review its judgment in terms of Rule 33(1) (a) – (d) Employment and Labour Relations Court (Procedure) Rules, 2016. The Claimant had opportunity to appeal the decision of the Court regarding costs but it did not.

6. The application lacks merit and is dismissed with no order as to costs.

**Dated and delivered at Nairobi this 17<sup>th</sup> day of December, 2020.**

**MATHEWS N. NDUMA**

**JUDGE**

## **ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

### **Appearances**

Mr.Kirwa for Claimant

Mr. Kigamwa for respondent

Chrispo: Court clerk