



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAKURU
CAUSE NO.403 OF 2014

GEOFFREY RONO.....CLAIMANT

VERSUS

NAKURU COUNTY AP COMMANDER.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

By application dated 21st December, 2018 the claimant is seeking for orders that;

This court be pleased to review its judgement/decree given on 11th November, 2016 so as to provide for interest on the award of Ksh.1, 014,955/- from the date of filing suit until payment in full and/or from any other period that the court may deem fit to grant.

Costs of this application be borne by the respondents.

The application is supported by the affidavit of the claimant and on the grounds that judgement herein was delivered against the respondent for a sum of ksh.1, 014,955.00 and the court failed to order for interests on the liquidated sum. Under Rule 29(3) of the ERLC Rules, 2016 the court is mandated to grant interest on the liquidated amount claimed and awarded in judgement at court rates from the period of filing suit or from any other discretionary period the court may deem fit to grant.

In this case the court did not consider the issue of interest on the liquidated claim as provides for by the Rules. Failure to do so is an error or omission warranting review. There is good and sufficient cause for the grant of interest herein as there shall be great prejudice upon the claimant where interests due are not awarded to him.

In his affidavit, the claimant avers that in the interests of justice his application be allowed as prayed. Judgement was delivered on 11th November, 2016 and the respondent filed application seeking for the judgement to be set aside and a ruling was delivered on 15th November, 2018 after which this application was filed.

In response the respondent filed Grounds of Opposition.

A review of the court orders, judgement and or decision is allowed under the provisions of Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (the Rules). These provisions must however be read with the overall objectives of the court set out under section 3(1) of the Employment and Labour Relations Court Act, 2011;

(1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by this Act.

A review under Rule 33 must meet the following conditions;

apply for a review of the judgment or ruling—

(a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the

knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

(b) on account of some mistake or error apparent on the face of the record;

(c) if the judgment or ruling requires clarification; or

(d) for any other sufficient reason

In the judgement of the court delivered on 11th November, 2016 the claimant was awarded wages from 2010 to 2014 all being ksh.1, 014,955.00. This was pleaded in the Memorandum of Claim under paragraph (b) as follows;

An order that the claimant be paid Kshs.24, 755/= x 41 months = Kshs.1, 014,955/= being unpaid salary from 6th December, 2010 till 24th April, 2014.

Under Rule 29(3) of the Employment and Labour Relations Court (Procedure) Rules, 2016 it provides that;

(3) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.

The Rules cited above must be put into account with regard to the provisions of section 12(4) of the Employment and Labour Relations Court Act, 2011;

(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

This being the case and the Rules requiring the constitutive Act, Employment and Labour Relations Court Act, 2011 requiring the Court to put into account the applicable Rules which in this case allow for the award of interests with regard to a liquidated claim, the claimant having pleaded for his due wages and the court in judgement on 11th November, 2016 having awarded the same, interests ought to have issued. There is a good cause which this court finds is sufficient to award interests on the liquidated sum of ksh.1, 014,955.00 from the date of filing suit until paid in full. this is what is just and fair.

This court is also guided by case law in the case of **Jane Wanjiku Wambu versus Anthony Kigamba Hato & 3 others [2018] eKLR**

... the Appellant was entitled to an award of interest at Court Rates from the time of filing the suit since she had already concluded that the Appellant was entitled to a liquidated amount which she had been deprived of by the actions of the Respondents. This is the predictable rule on award of interest on liquidated sums that has emerged from our Courts' repeated application of

Section 26 of the Civil Procedure Act. The cases cited above reached the conclusion that where a claim is for liquidate damages, unless there is good cause, the interest should be calculated from the date of filing the suit.

In the case of **Sapra Studio versus Kenya National Properties Limited (No.2) (1985) KLR 1011** the Court of Appeal allowed the applicant's appeal, but on the issue of interest payable on the liquidated claims, on its own motion, held as follows;

As far as the issue of interest is concerned the judgment of the court contained an obvious error arising from an accidental omissions as contemplated under rule 35 of the court of Appeal Rules.

The court which has to correct an accidental omission is the same court that gave the judgment out of which the accidental omissions arises

In this case, invited to review the matter and address the issue of interests payable on the liquidated claim, there being a sufficient cause, the same is hereby found with merit. The interests are due on the awarded sum of Ksh.1, 014,955.00 from the date of filing of the suit.

Accordingly, application dated 21st December, 2018 is hereby allowed, interests are due on the liquidated such of Ksh.1, 014,955.00 from the date of filing suit and until the same is paid in full. no orders to costs herein.

Delivered at Nakuru this 28th day of March, 2019

M. MBARU JUDGE

In the presence of:.....