



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 444 OF 2017

JOHN MURIITHI MURIUKI.....CLAIMANT/APPLICANT

VERSUS

MS HAZEL HOLMES & 5 OTHERS.....RESPONDENT

RULING

1. The application before me is the Claimant/Applicant's notice of motion application dated 6th March 2019 seeking to review the judgment of the court issued on 25th February 2019 wherein the court awarded differential pay for 9 months. The Claimant asserts he acted as club manager for 12 months and that the differential pay should have therefore been for a year and not the 9 months awarded by court. He relied on the case of **Republic v Public Procurement Administrative Review Board & 2 Others [2018] eKLR** and argued that the court has the power to review its judgment for any sufficient reason. As to whether the error cited was subject to an appeal or review, he relied on the case of **National Bank of Kenya v Ndungu Njau [1997] eKLR** where the Court of Appeal held that He thus sought a review of the decision of the judgment for the material errors on the face of the judgment.

2. The Respondent was opposed and asserts that the motion was misplaced as the matters the Claimant/Applicant seeks reviewed are grounds for an appeal and not a review. The Respondent relied on the case of **Stephen Wanyoike Kinuthia (suing on behalf of John Marega (deceased) v Kariuki Marega & Another [2018] eKLR** as to what constitutes an error apparent on the face of the record. The Respondent relied on the case of **Chelimo Plot Owners Welfare Group Owners & 288 Others v Langat Joel & 4 Others (sued as the Management Committee of Chelimo Squatters) [2018] eKLR** as well.

3. It is not in doubt that there is jurisdiction to grant a review of the judgment of this court. Rule 33 of the 2016 Rules of this Court provides as follows:-

33. (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, 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. (emphasis mine)

4. The foregoing provisions of law do not envision a situation where review can arise if there is an erroneous conclusion of law or evidence. Such an eventuality is never a ground for review but may be a good ground for appeal. In the case of **Stephen Wanyoike Kinuthia (suing on behalf of John Marega (deceased) v Kariuki Marega & Another (supra)** the Court of Appeal (Nambuye, Asike-Makhandia, Ouko JJA) elaborated that though there is no particular definition of what constitutes an error on the face of the record, the holding in the Tanzanian case of **Chandrakhant Joshibhai Patel v R (2004) TLR, 218** the holding was that an error apparent on the face of the record *must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reading on points on which may be conceivably be two opinions.* I agree entirely with the reasoning in that case save to add by way of clarification that the issue that may fall under this aspect of error should be so clear such as an arithmetical error or indicating the wrong date or place but does not extend to, borrowing the words used by the court, an issue that is to be established by a long drawn process of reading on points which may be conceivably two opinions. In the case before me, the Claimant asserts that he acted as club secretary for 1 year. In my findings I held that he had acted for 9 months reckoning the same from his evidence and the material he placed

before the court. As a finding of fact, that is not a matter for review but a point he could have taken on appeal. In conclusion, from the foregoing, the finding of the court is that the Claimant's notice of motion application is completely devoid of merit and is accordingly dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Nyeri this 24th day of May 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar