



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 356 OF 2017

CONSOLIDATED WITH CAUSES 357, 358, 359, 360, 361, 362, 363, 364, 365,

366, 367, 368, 369, 370, 371, 372, 373, 374 & 375 OF 2017

AMINA GUYO DALACHA & 19 OTHERS.....CLAIMANTS

VERSUS

JIANGXI ZHONGMEI ENGINEERING

CONSTRUCTION COMPANY LIMITED.....RESPONDENT

RULING

1. The application before me is the Respondent's notice of motion dated 20th February 2019 seeking review of the judgment of this court made on 24th January 2019. In the review application the Respondent asserts that there is an error on the face of the record as the Respondent argues that the court found that they were not entitled to payment underpayment yet proceeded to make the award. The Claimants in their response assert there is no error on the face of the record.

2. In submissions filed, the Respondent/Applicant asserts there are errors on the face of the judgment that require review in terms of Rule 33(1)(b) of the Employment and Labour Relations Court (Procedure) Rules 2016. The Respondent argues that the court fell in error by disallowing part of the claim and later making an award on the disallowed claim. The Respondent cited the case of **Stephen Wanyoike Kinuthia (Suing on behalf of John Kinuthia Marega (deceased) v Kariuki Marega & Another [2018] eKLR** where the Court of Appeal held

*While there cannot be a precise definition of what constitutes mistake or error on the face of the record, the Court in **Muyodi v Industrial and Commercial Development Corporation & Another (2006) 1 EA 243** explained*

it as follows:

*“In **Nyamogo & Nyamogo -vs- Kogo (2001) EA 174** this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal.”*

*The Court accorded no particular definition for an error apparent on the face of the record, stating that it would vary with each particular case. But in an earlier Tanzanian decision in the case of **Chandrakant Joshibhai Patel v R (2004) TLR, 218**, it was held that an error stated to be 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’.

3. The Respondent cited various authorities in their submissions to buttress their arguments. However, the motion fails as there is no error on

the face of the Judgment. As held in the case of **Stephen Wanyoike Kinuthia (Suing on behalf of John Kinuthia Marega (deceased) v Kariuki Marega & Another** (*supra*) an error stated to be 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. In this case I held that the Claimants were entitled to house allowance and underpayment of salary but not for public holidays and overtime worked. There is no obvious mistake that is clear and patent for one who runs and reads. The award in respect of underpayment is in regard to the sums that were subject of the agreement entered into and endorsed by the County Commissioner. The application thus is not fit for grant and is dismissed with costs to the Claimant.

It is so ordered.

Dated and delivered at Nyeri this 1st day of July 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar