



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
IN NAIROBI
CAUSE NO. 350 OF 2015

SUSAN MUMBUA.....1st CLAIMANT
LORNA TSISIGA.....2nd CLAIMANT
TIVENDER KAUR JUTTLA.....3rd CLAIMANT
JOHANNES OLUOCH.....4th CLAIMANT
JOAN WANGUI KARIUKI.....5th CLAIMANT
HARRISON NDWIGA MURIITHI.....6th CLAIMANT
DANIEL MUEMA MUTANGILI.....7th CLAIMANT

v

NAVITAS LIMITED.....1st RESPONDENT
AUSTRALIAN UNIVERSITY STUDIES
INSTITUTE (AUSI).....2nd RESPONDENT
AUSEDKEN LIMITED.....3rd RESPONDENT

RULING

1. For determination is a motion dated 20 July 2019 by the Claimants seeking orders reviewing a judgment delivered on 19 July 2019.
2. The main ground advanced in support of the application was that there were errors apparent on the face of the record.
3. The Claimants contended that the errors were apparent on the face of the record because the Court omitted to make findings on some aspects of the heads of claim, and reference was made to the failure to award the Claimants terminal dues as offered by the Respondents in their letters of 3 February 2015; failure to award the 3rd Claimant two years' salary as pleaded; failure to award outstanding leave dues for the Claimants in terms of the Respondents letters of 3 February 2015, and failure to award the 3rd Claimant house allowance at rate of 15% of basic salary.
4. The 1st and 2nd Respondents opposed the application and relied on a replying affidavit sworn by Owuor Thatcher, Advocate.
5. The Respondents asserted that the Claimants were challenging both factual findings and legal conclusions by the Court, and therefore the available channel was to Appeal and not invoke the Review jurisdiction of the Court.

Evaluation

House allowance

6. The 3rd Claimant's pleaded case was that she was entitled to house allowance at the rate of 30% of the basic salary.

7. The Court declined to find in her favour and gave reason(s) at paragraph 45 of the judgment. The 3rd Claimant now contends that the Court should have awarded house allowance at the rate of 15% of the basic salary.

8. In the view of this Court, it is legally incomprehensible to argue that a finding by the Court where reasons have been given can amount to an error apparent on the face of the record.

Two years' salary to the 3rd Claimant

9. It was also contended on behalf of the 3rd Claimant that the failure to award her the equivalent of 2 years' salary was an apparent error on the face of the record which could be rectified through the *Review* jurisdiction.

10. In the humble view of the Court, the failure to award a head of claim is not an error apparent on the face of the record. It is an exercise which may require the Court to indulge into an examination of evidence which was tendered on both sides and therefore not fit for redressing under the *Review* jurisdiction (see *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute* (2018) eKLR).

Terminal benefits

11. In respect to terminal dues, the Court at paragraph 59(b) of the judgment expressly awarded all the Claimants outstanding terminal benefits, in terms of the letters issued by the Respondents on 3 February 2015.

12. The Claimants pleadings were not only verbose but vague and the demands were outlined at paragraph 19A while the prayers were set out in paragraph 21.

13. The prayer at paragraph 21(c) of the *Amended Memorandum of Claim* sought unpaid dues in terms of letters dated 3 February 2015, and the Court granted the same. That cannot be an error on the face of the record.

Conclusion and Orders

14. The Court finds that the Claimants wrongly invoked its review jurisdiction. The application also lacks merit. It is dismissed with costs to the Respondents.

Delivered, dated and signed in Nairobi on this 1st day of November 2019.

Radido Stephen

Judge

Appearances

For Claimants Mr. Kirimi instructed by Kinyanjui Kirimi & Co. Advocates

For 1st & 2nd Respondents Mr. Thatcher instructed by LJA Associates

For 3rd Respondent Ochwo & Co. Advocates

Court Assistant Lindsey