



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 203 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 11th December, 2019)

PATRICK ONG'OL OPIYO.....CLAIMANT/APPLICANT

-VERSUS-

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF KENYA (YWCA)....1ST RESPONDENT

IRENE KIZITO.....2ND RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion on 11th June, 2019 seeking orders the following orders, that:-

- 1. This Honorable Court be pleased to review the Judgment delivered herein on 14th of May, 2019 by Hon. Justice Hellen Wasilwa.**
- 2. This Court does review paragraph 50 of the Judgment by finding that the Claimant is thus entitled to payment of a total of Kshs. 401, 999/= less statutory deductions.**
- 3. Costs be in the cause.**

2. The application is based on grounds that:-

- 1. This Court in its Judgment determined that the Claimant is entitled to the payment of a total of Kshs. 401,999/= less Kshs. 181, 747 which was already paid, leaving the balance at Kshs. 220,252 less statutory deductions.**
- 2. The Claimant did not receive the said Kshs. 181,747/= which was offered by the Respondent being terminal dues for the reason that the tax deduction of Kshs. 69,223.52 was disputed by the Claimant.**

3. The application is supported by the affidavit of Patrick Ong'ol Opiyo, the Applicant herein, sworn on 4th June, 2019. He deposes that the sum of Kshs. 181,747 was an offer made to him on 25th June, 2014 by the Respondent which he did not accept. He avers that the fact of not receiving Kshs.181, 747 was not disputed by the Respondent during the hearing of the matter.

4. The Respondent filed a Replying Affidavit sworn by Deborah Olwal Modi the Respondent's Secretary General, on 11th July, 2019. She avers that the Respondent in good faith made an offer to the Applicant of Kshs.250,970 as payment of redundancy dues, which he declined.

5. She avers that the Judgment delivered on 14th May, 2019 was based on the Applicant's averments and that there is no error on the record for reason that the Court was guided by the Applicant's pleadings.

6. The application was heard by way of written submission.

Applicant's submissions

7. The Applicant submits that if a party is aggrieved by a Judgement, it may apply for review under Rule 33 of the Employment and Labour

Relations Court (Procedure) Rules 2016. In support of this submission, he relies on the case of **National Bank of Kenya v Ngungu Njau [1997] eKLR.**

8. The Applicant submits that the amount of Kshs.181,714 offered by the Respondent was not paid to him, as it was merely a proposal which he did not accept.

9. He submits that there is an error apparent on the record of the judgment as the court seems to have awarded him a certain amount and taken it away either by mistake or by reason that it was not clear. He urges the Court to re-evaluate the evidence on record and find that the sum of Kshs. 181,714 was neither paid to him nor were statutory deductions made.

Respondent's submissions

10. The Respondent submits that the errors stated by the Applicant in his allegations that he is entitled to Kshs. 401,999 less statutory deduction was determined by the Court when it deemed it fit to award him as pleaded in his claim.

11. It submits that there is no basis for the review sought as there is no error on the face of the record or any sufficient reason to warrant a review. To fortify this submission, it relies on the case of **Kenya Union of Commercial Food & Allied Workers (KUCFAW) v Gakuyu Farmers Co-operative Society Limited [2019] eKLR.**

12. It submits that the application cannot be cured by Rule 33 of the ELRC (Procedure) Rules as the Applicant seemingly seeks an appeal to this Court. It relies on the case of **Michael Opondo Were v Maths Trading Company Limited [2016] eKLR** where the Court held that review is set out under Rule 33 of the ELRC (Procedure) Rules and such principles do not permit the Court going back into the merits and demerits of the award. It therefore submits that the Applicant's application has no merit.

13. I have examined the averments of the Parties herein. I note that in the evidence of the Claimant, he stated that:-

“The Respondents wanted to pay me some money which I rejected i.e. 250,790/=.”

14. It is thus clear that this Court was in error when it made a finding that the Claimant had been paid this money when indeed he had rejected it.

15. This is an error on the record, which I find requires correction through review.

16. I therefore review my judgment and enter judgment for the whole amount awarded as 401,999/= less statutory deductions instead of 220,252/=.

17. Costs in the cause.

Dated and delivered in open Court this **11th day of December, 2019.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of

No appearance for Parties