



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1207 OF 2010

(Before Hon. Lady Justice Hellen S. Wasilwa on 5th March, 2018)

SHEM OPIYO OGANGO..... CLAIMANT

VERSUS

SHIVA CARRIERS LIMITED RESPONDENT

RULING

1. The Application before Court is the one dated 24th October 2017. The Applicants seeks orders of stay and review of this Court's orders/ruling dated 28th September 2017. The application is brought under Rule 33(1) (2) and (3) of the Employment and Labour Relations Court (Procedure) Rules 2016 and Section 16 of the Employment and Labour Relations Court Act.

2. The application is grounded on the following grounds:-

i. That the Ruling/Order made by the Honourable Lady Justice Hellen Wasilwa in this matter on the 28th September, 2017 has an error apparent on the face of the record.

ii. That there is good and sufficient cause for review of the Ruling/Order given as prayed below.

iii. That in the Ruling/Order, the Court found that the Respondent/Applicant owed the Claimant/Respondent Kshs.129,814.20/= and ordered the Respondent /Applicant to pay the Claimant/Respondent the said amount within 30 days failure to which the amount owing will continue to accrue interest at Court rates from the date of judgement till payment in full or until execution.

iv. That in the ruling, there is a mathematical error in the calculations of the amounts claimed to be owed to the Claimant/Respondent.

v. That the calculations were stated as follows:-

<i>Principal amount</i>	<i>=794,303/=</i>
<i>Costs as taxed</i>	<i>=113,897/=</i>
<i>Total</i>	<i>=860,710/=</i>
<i>Less 30% PAYE</i>	<i>=780,983/=</i>
<i>Add Court fees</i>	<i>= 30,000=</i>
<i>Total</i>	<i>= 810,982.1</i>
<i>Add interest</i>	<i>= 64,864.10</i>
<i>TOTAL</i>	<i>= 875,846.2</i>

vi. *That the above calculations are erroneous as they have a mathematical error in calculation as the same should amount to Kshs.746,636.10/=.*

vii. *That the Respondent/Applicant paid to the Claimant/Respondent Kshs.746,814.20/=.*

viii. *That the sum was what was owed to the Claimant/Respondent after remitting PAYE to Kenya Revenue Authority.*

ix. *That the claim is settled in full.*

x. *That the Applicant stands to suffer loss of its properties that had already been proclaimed by auctioneers instructed by the Claimant's advocates if the ruling herein is not stayed pending inter parties hearing and determination of this application.*

xi. *That in view of the foregoing there is good and sufficient cause for reviewing of the said Ruling/Order as prayed.*

xii. *That this application has been made diligently and without unreasonable delay.*

xiii. *That accordingly, in the interests of justice and fairness, the said Orders sought in this application ought to be granted as prayed.*

3. The application is also based on the supporting affidavit of the Applicant's Advocate herein who reiterate the averments in the grounds. They aver that the ruling of the Court made on 28th September 2017 delivered without notice to the parties had errors.

4. Indeed this ruling was delivered on 28th September 2017 with notice to the Parties given in Court on 22nd June 2017 in the presence of the parties. The error pointed out by the Applicant relates to the calculation of PAYEE, which they put at 208,937.90.

5. The Respondents on their part filed their replying affidavit on 13th December 2017. They aver that there is a small margin of mistake, which is only in the reduction of the sum payable to the Claimant from 129,032 to 95,859.03, which puts the figure unpaid at 95,859.03.

6. I have examined all averments of the parties. Indeed this Court has powers to review its own orders. From the calculations made the principal sum is Kshs.794,303/=. If 30% of PAYEE is subtracted, this amount comes to 794,303-238,290 (Payee) = 556,290/=.

7. I note that the Applicants are trying to justify this claim by subtracting costs to Payee. This in my view is wrong costs are not a benefit to the claimant which only trying to refund the Claimant actual costs incurred.

8. In the circumstances this amount will be 556,290 plus costs of 113,897 and Court fees of 30,000/=and 64,864 % interest. This come to Kshs.765,051/=. It is true I arrived at a figure of 875,846.2 which is an error. The Respondent Applicants have paid off 745,814.17. The balance therefore is Kshs.19,237/= which I direct should be paid immediately within 2 weeks. In default execution to issue.

Read in open Court this 5th day of March, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties