



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 951 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 28th May, 2018)

LINUS MUKALO SHISANYA.....CLAIMANT

VERSUS

WELLS FARGO LIMITED..... RESPONDENT

RULING

1. The Application before Court is the Notice of Motion Application dated 13th December brought under Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya and Order 45 Rules 1 (1) and 2 (1) of the Civil Procedure Rules filed by the Claimant/Applicant seeking orders as follows:-

a. This matter be certified urgent and service of this application be dispensed with in the first instance.

b. The Judgement of the Honourable Lady Hellen Wasilwa delivered herein on the 5th December, 2017 be reviewed so as to properly indicate the totals of the tabulation under paragraph 21.

c. The cost of this application be provided for.

2. The application is supported by the Affidavit of Sherwin Mbogo Njoroge, Counsel for the Applicant deponed to on 13/12/2017. It is also based upon the following grounds:

1. This Honourable Court delivered Judgement in this matter on the 5th December 2017.

2. That there is an error/mistake apparent on the face of the said Judgement.

3. That under the said Judgement the Claimant was awarded various reliefs under paragraph 21 sub-paragraph 1-7 (both inclusive).

4. That the Court gave the total amount under the said paragraph as Kshs. 50,600.

5. That however the said total given by the Court is incorrect and the same ought to have been Kshs. 80,906.67.

6. That consequently the total amount given under sub-paragraph 8 is also incorrect. The same ought to be Kshs. 204,050.67 and not Kshs. 183,744.

7. That unless the judgement is reviewed the Claimant will be denied a substantial part of the amount he was awarded under the Judgement.

8. In view of the foregoing, there is good and sufficient cause for review of the said Judgement as prayed.

3. The Respondent filed grounds for opposition stating that there was no error on the face of the record to necessitate the orders sought and that the final tally coincides with the sum of the figures tabulated therefore granting the Orders sought would amount to the Claimant unjustly enriching himself.

4. The Claimant submits that he seeks to review the said Judgement on account of a mistake/error apparent in the face of the Judgement as

the Honourable Court gave the total amount of Kshs. 50,600 but after a quick calculation of the said amounts it came to Kshs. 80,906.67/=.

5. He further submits that this a simple application whose determination requires nothing more of the Court than merely adding up the amounts. He continues to add that granting the said orders would not only be fair and just but would also not amount to the Claimant unjustly enriching himself as sensationally claimed by the respondent in its grounds of opposition.

6. The Respondent submit that the application has been brought on the basis of the tabulation set out under paragraph 21 which is marked without prejudice making its contents privileges. That privilege was never at any one point waived by the Respondent as the said letter was issued by the Claimant's advocate as an offer during a period of negotiations and the said offer was rejected by the Claimant hence the present suit.

7. They aver that the only admitted sums, upon which the Judgement could be delivered in favour of the claimant are those set out under the provisions of the termination letter dated 10th April 2013 and therefore the Claimant's Application is without merit and is for dismissal.

8. I have considered the averments of the parties plus their submissions. This Court has jurisdiction to review its orders under Rule 3(1) of the Employment and Labour Relations Court (Procedure) Rules 2016 which state that:-

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.

9. The Applicants contend that there is an error apparent on the record in relation to calculations made.

10. I have looked at my judgment dated 5/12/2017. Under paragraph 21 of the said Judgment, I gave judgment for the Claimant in terms of Appendix 5 and tabulated as Appendix 9. The figures are listed therein. The total I gave in this limb from (1) to (7) is 50,600/=. I have however noted that indeed there is an error on this total because the total should be 80,906/=.

11. I do agree that this is an error in my calculation, which I now correct. It also follows that the total award cannot be 183,744/= as ordered but is now corrected to read $80,906 + 123,144 = 204,050/=$.

12. I therefore allow this application for review and now correct my judgment to read at paragraph 21 under total to be 80,906/= instead of 50,600/= and at paragraph 8 total awarded to read 204,050/= instead of 183,744/=.

13. Costs in the cause.

Dated and delivered in open Court this 28th day of May, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kamara holding brief for Njoroge for Claimant – Present

No appearance for Respondent