



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 143 OF 2015

(Before D. K. N. Marete)

PATRICK KORIR ROTICH.....CLAIMANT

VERSUS

UNILEVER TEA KENYA LIMITED.....RESPONDENT

R U L I N G

This is an application for review by the claimant/applicant dated 26th April, 2018.

The application seeks a review of judgement of 8th December, 2016 on grounds of, *inter alia*, an error on the face of the record. The application is supported by the Supporting Affidavit of Patrick Korir Rotich the claimant/applicant sworn on even date.

The respondent in a Replying Affidavit sworn on 4th December, 2017 and filed on 8th instant opposes the application and avers that there is no error on the face of record and therefore the application is not merited. She further avers as follows;

5. *THAT the applicant has not established sufficient grounds to warrant a review of the judgement.*

6. *THAT the application is being brought too late in the day considering the fact that the judgement was delivered way back on 8th December, 2016 and the application filed on 26th February, 2017. More than 3 months after delivery of judgement.*

7. *THAT indeed it is also not true that there is an error apparent on the face of the record as claimed by the applicant. The applicant never pleaded his monthly salary or emoluments at all, no periodic salary or pay was pleaded or evidenced hence the court was very justified and correct in holding so.*

8. *THAT the amended statement of claim relied on by the claimant still does not disclose the monthly pay/salary that the claimant earned.*

The matter came for hearing on 16th May, 2018 when Mr. Ochieng, counsel for the applicant submitted that the computation of the award was not made due to the absence of the monthly pay of the claimant/plaintiff. It was his further submission that this could be deduced from paragraph 16 of the Amended Statement of the Claim and also the letter of appointment and salary review letters annexed to the original claim.

This is a sad case for the applicant. Nothing seems to have changed so as to justify a review of the judgement as prayed. I agree with the respondent that in all, the entire pleadings, including the amended plaint does not disclose the monthly emoluments of the claimant so as to facilitate a computation of award at the close of the day. Paragraph 16 as referred to is not clear cut on this and comes out with a cumulated figure of Kshs.1,644,258.00 being twelve (12) months salary. This is not clear and there is no evidence as to how this was arrived at.

At all times, it is necessary that parties plead particulars of pay so as to facilitate a computation of award in event this arises. This was not the case here. The record remains the same and therefore diminishing the ground of an error on the face of the record.

I am therefore inclined to dismiss the application with orders that each party bears their own costs of the application.

Delivered, dated and signed this 21st day of May 2018.

D.K. Njagi Marete

JUDGE

Appearances

1. No appearance for the respondent.
2. Mr. Ochieng instructed by Sila Munyao & Company Advocates for the claimant/applicant