



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 985 OF 2014

GRACE AKINYI AHAWO CLAIMANT

v

KENYA AIRPORTS AUTHORITY RESPONDENT

RULING

1. For determination is an application by Grace Akinyi Ahawo (applicant) seeking orders

1....

2. **THAT** this Honourable Court be pleased to review and or vary the judgment of 21st May, 2018 in respect to the awarded special damages, and award the following prayers

a) Monthly salary

For 17 working days (75 17/30) Kshs 42,000/=

b) House allowance for 17 working days (20000 17/30) Kshs 11,333/=

c) 45 leave days 75,000 (45/30) Kshs 123,500/=

d) One year service pay(75,000 * 12) Kshs 900,000/=.

2. Kenya Airports Authority (Respondent) filed grounds of opposition to the application on 19 June 2018 and when the application came up for submissions from the parties on 27 June 2018, they indicated that they would rely on the material already on record.

3. The applicant advanced one primary ground in support of the application i.e., that the Court erroneously omitted to award relief which had been sought without tendering any explanations.

4. In opposing the application, the Respondent contended that the applicant had not met the test for review as outlined in Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and that the application was frivolous as it sought to have the Court re-write the judgment on special damages.

5. The Court has considered the application.

6. It is correct that among the heads of claims presented by the applicant were monthly salary for 17 days computed as equivalent to Kshs 42,000/-; house allowance for 17 days equivalent to Kshs 11,333/-; 45 leave days equivalent to Kshs 123,500/- and 1 year service pay of Kshs 900,000/-.

7. The Respondent, as already stated contended that these heads of claims had been paid as indicated in the letter terminating the applicant's employment.

8. The Court has perused the judgment. It did not make any reference to these heads of claim and the evidence, if any produced in support thereof.

9. Further, there is nothing on record to show that the parties drew or agreed on the Issues for determination or trial.

10. The question therefore begs whether the omission is curable under the review jurisdiction.

11. It is trite law that a trial Court is under an obligation to determine all the Issues raised or arising from the pleadings

12. In *Mohammed Eltaff & 3 Others v. Dream Camp Kenya Ltd (2005) ECLR*, the Court of Appeal stated that it is indeed a substantial objection to a judgment if it does not dispose of the questions that were presented by the parties for determination by the trial court or that the judgment has left certain issues unresolved (see also *Odd Jobs vs. Mubia (1970) E A 476*).

13. In this Court's view therefore the error by the Court when delivering judgment to address an Issue which rose clearly from the pleadings and evidence is not curable through the review jurisdiction. It should be taken on appeal.

14. But before concluding, the Court would observe that in terms of section 35(5) & (6) of the Employment Act, 2007, an employee who is a member of a pension scheme, like the applicant admitted herein would not be entitled to service pay.

15. For the above reasons, the application dated 28 May 2018 is dismissed.

16. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 30th day of October 2018.

Radido Stephen

Judge

Appearances

For applicant Ojienda & Co. Advocates

For Respondent Federation of Kenya Employers

Court Assistant Stella