



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 324 OF 2015

BONIFACE MULANDICLAIMANT

VERSUS

ALI BARBAOUSRS CAVE RESTAURANT.....RESPONDENT

RULING

INTRODUCTION

1. On 1/7/2016, I entered judgment for the claimant whereby I awarded ksh.184,749.40 inclusive of an overtime pay of ksh.104,270.40. On 20/7/2016, the respondent applied for review of the said judgment on ground that the award of the overtime of Ksh.104,270.40 was an error apparent on record. In response to the said application, the claimant filed a replying affidavit opposing the setting side of the award of overtime and instead prayed for review of the award of overtime upwards to the tune of kh.535,165.

2. After considering the application and the reply by the claimant, whereby I delivered the ruling dated 9/9/2016, I allowed the application by the respondent by setting aside the award of overtime of ksh.104,270.40 but dismissed the request for review by the claimant on procedural ground.

3. The claimant has now brought the application dated 21/9/2016 seeking to have both the ruling dated 9/9/2016 and 1/7/2016 reviewed by awarding him ksh.535,165. The grounds cited for the review are that:

(a) That the court in its judgment of 1/7/2016 contravened the principles of Article 159(2) (d) of the constitution by disregarding my application for enhancement of the overtime allowance on grounds that it was wrongly brought before the court.

(b) That the court disregarded the applicants claim and evidence on overtime allowance despite RW2 not denying that I worked for long hours and the same was not in contention during the hearing.

(c) That the court in its ruling dated 9/9/2016 misdirected itself by applying Regulation 5 of the Regulation of Wages (Hotel and Catering Traders) Order selectively and ignoring Regulation 7 of the said Regulations.

(d) That the court misdirected itself by setting aside the entire initial award on overtime allowance in its ruling dated 9th September 2016 whereas the same was not among the grounds for review and specifically ground No.3 by the respondent.

4. The application was not opposed by the respondent as such it proceeded exparte.

ANALYSIS AND DETERMINATION

5. The issue for determination is whether the application herein meets the threshold for granting review of the impugned decisions. The application is brought under Article 162(2) (a) of the Constitution, Rule 32 of the rules of this court and Section 12 and 16 of the Employment and Labour relations Court Act. In my view the relevant provision upon which to seek review of judgment and rulings of this court is rule 33 of the Employment and Labour Relations Court rules. The said provision outlines the grounds for review of the decisions of the court as including discovery of new and important matter or evidence; mistake or error apparent on the face of the record; the decision being in need of clarification; and any other sufficient reason.

6. After careful consideration of the grounds cited for seeking review of the said ruling and judgment, I have no doubt that they are not among the grounds for review of court's decisions provided for by the said Rule 33 of the rules of procedure for this court. In my considered opinion the grounds cited are best suited for determination by the appellate court and not this court. Entertaining the application based on the said grounds would mean that I am sitting on appeal over my own decision. Consequently, I find and hold that the application herein has not met the threshold for grant of review of the impugned decisions.

DISPOSITION

7. For the reasons that the application for review dated 9/9/2016 is not well grounded, I dismiss the same with no order as to costs.

Dated, Signed and delivered this 31st March 2017

O.N. Makau

Judge