



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1908 OF 2011

(BEFORE HON. LADY JUSTICE HELLEN S. WASILWA ON 18TH SEPTEMBER, 2017)

KENYA UNION OF EMPLOYEES OF VOLUNTARY

AND CHARITABLE ORGANISATIONS (KUEVACO).....CLAIMANT

VERSUS

NAIROBI PENTECOSTAL CHURCH:

CHRIST IS THE ANSWER MINISTRIES (NPC-CITAM).....RESPONDENT

RULING

1. The application before Court is one dated 6.6.2016 where the Applicant Claimant seeks an order for review of this Court's judgement dated 29/10/2015.
2. The Applicant has sought a review of the judgement on the grounds that there is discovery of important matter/evidence which was not in the Applicant's knowledge at time of initial hearing and that there were areas in the judgment which require clarification and that there are sufficient reasons for review.
3. The 1st ground for this application is that at paragraph 2(a) (i) 9 of the Amended Statement of Claim dated 20th August 2013 written final submission the Grievant right to gratuity, the Respondent offered to pay 332,515.05 as per Respondents' Internal Memo to her dated 11.3.2013 appearing as Appendix KUEVCACO -05. The Applicant states that they inadvertently omitted to make this prayer.
4. The Applicant also aver that they had sought payment of leave and in paragraph 9 of the Judgement, the Hon. Court alluded to this that the amount due was computed at 44,811.03 as per Respondents Internal Memo dated 11.3.2013.
5. The Applicant further avers that in awarding the Grievant prayers sought, this Court inadvertently used 63,262.63 as her gross salary instead of 72,751 as per Memo of 11.3.2013.
6. The Applicant has averred that the Court exercised its discretion unfairly by not granting the Grievant gratuity and outstanding leave on record.
7. The Applicant thus wants this Court to make a further award for the Claimant of Kshs.332,515.05 for gratuity and Kshs.44,811.03 for 17 days outstanding leave.
8. On the prayer of the judgement requiring clarification, the Applicant contends that the Respondent

deducted 41,489/= as salary advance from total payable amount ordered by Court. The Applicant requires clarification on this. The Applicant also requires clarification on costs payable.

9. The Applicant submits that there are sufficient reasons requiring review of the judgment as prayed and requires the judgment review to include 377,326/= for gratuity and leave, Kshs.41,489/= wrongly deducted by the Respondent as advance salary plus costs of the suit.

10. Despite being served and despite knowledge of the existence of this application for review, the Respondent failed to file any reply or respond as ordered by Court on 19.1.2017 and 23.2.2017. The application is therefore unopposed.

11. Considering the prayers sought, the issue of gratuity, the Applicant has referred to an Internal Memo dated 11.3.2013 which computed Claimant's benefits and this included 332,515.05 gratuity and 17 days outstanding leave of Kshs.44,811.03. This prayer was however not made in the claim filed in Court. It was however this Court's consideration that the Claimant being a member of NSSF was not entitled to any gratuity payment as envisaged under Section 35(6) (d) of the Employment Act 2007. The claim for gratuity is therefore still not tenable.

12. On payment of outstanding leave, this having been alluded to in the Internal Memo now before me, I find the Claimant is entitled to the payment of the same.

13. On deductions made to the Claimant's final dues in form of advance salary, this is an unauthorized deduction which Respondent has no authority to make and I do reiterate that aspect.

14. I therefore allow partly the application for review of my judgement and include the following:-

a. Kshs.44,811.03 as outstanding leave allowance of 17 days.

b. Clarify that the total claim awarded is now Kshs.1,373,942.03 less statutory deductions.

c. The Respondents to pay costs of this suit.

Read in open Court this 18th day of September, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent