



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 98 OF 2017
MAURICE OTIENO OWNY.....CLAIMANT
VERSUS
1. MOMBASA CONTAINER TERMINAL LTD
2. SOV TRANSAMI [K] LTD.....RESPONDENTS

R U L I N G

INTRODUCTION

1. The application before me is the claimant's Notice of Motion dated 15/11/2016. It seeks review of the judgment of this court delivered on 29/7/2016. The grounds upon which the Motion stands are that there is discovery of new and important matter or evidence; there is some error apparent on face of record, and that the judgment requires clarification. The Motion is supported by the affidavit sworn by the claimant on 13/1/2016. The gist of the application is that the findings and orders in the impugned judgment which require clarification are:

- (a) The house allowance payable for the 16 days worked but not paid.
- (b) Underpayment from 1/1/2012 to 30/7/2012.
- (c) Overtime payable within the period of 3 years immediately before filing suit.

2. The application is opposed by the respondent who has filed grounds of objection to the Motion dated 6/12/2016. The gist of the objection is that the alleged new evidence/matter discovered after judgment has not been demonstrated; there is no error apparent on the face of the record and the judgment does not require any clarification.

ANALYSIS AND DETERMINATION

3. There is no dispute from the motion, affidavit, submissions and the entire court record that the applicant brought this suit on 17/3/2014 claiming the following reliefs:

- (i) 16 days salary not paidksh,34478.70
- (ii) Salary arrears for 1/1/2012 to 30/7/2012.....ksh.22915

- (iii) Arrears of basic salary August 2012 to
December 2012ksh.8803
- (iv) Arrears of basis salary for January 2013 to June 2013ksh..49803.60
- (v) Overtime for 2007-2011ksh..1,788,848.40
- Grant totalksh...1,840,201.10
- (vi) Certificate of service
- (vii) Interest
- (viii) Costs

4. On 29/7/2016, I rendered my judgment on the matter whereby after careful consideration of all the material presented to the court, I found that the claimants salary as at July 2013 when he resigned was ksh.48547 basic plus ksh.8700 house allowance equaling to ksh.56347. The said sum was however erroneous indicated as ksh.56847. I then proceeded to award the claimant ksh.30052.15 as salary for the 16 days in July 2013 based on the said gross pay of ksh.56857. I however dismissed the claim for underpayment for January to July 2012 after I made a finding that the claimant had been paid ksh.41598 in August 2012. I however awarded kh.8803 being salary under payment between august and December 2012 as prayed, and further awarded ksh.46,804.50 as the salary underpayment for January to June 2013. Finally I considered the claim for overtime for the period between 2007 and 2011 but dismissed it for being time barred by dint of Section 90 of the Employment Act. In the end the total award made was ksh.85,659.65 less one month salary in lieu of notice as admitted by the claimant leaving a net award of ksh.29,311.90 plus costs and interest. I also granted the prayer for certificate of service.

5. The issues for determination herein are:

- (a) Whether there is new and important matter or evidence discovered after the judgment.
- (b) Whether there is an error apparent on the face of the record.
- (c) Whether the judgment requires clarification.

Discovery of new and important matter or evidence

6. I agree with the respondent that the applicant has not demonstrated any new and important matter or evidence which was not within his knowledge as at the time when the impugned judgment was passed.

Error on the face of the record

7. An error apparent on the face of the record is one which speaks for itself and does not require legal or factual arguments to prove it. In this case, the applicant has not pointed out any error on the face of the record. In my view his argument tilts more towards pointing at the error of judgment which goes to the merits of impugned judgment. In that regard, his remedy lies in an appeal to a higher court and not review by the trial court. The arithmetical error of ksh.500 added to the monthly salary of July 2013 to read ksh. 56857 instead of ksh.56357 does not qualify to be an error apparent on the face of the record. That is a minor error which can be rectified by the court *suo moto*, and I so rectify.

Clarification

8. The applicant has cited three items in the impugned judgment that require clarification. However, in my view the judgment is clear and containing no ambiguity.

DISPOSTION

9. For the reason that the application falls below the threshold for ordering review of the impugned judgment, and I dismiss it with costs.

Dated signed and delivered this 17th November 2017

O. Makau

Judge