



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1389 OF 2013

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERS.....CLAIMANT

VERSUS

SANPACK AFRICA LIMITED.....RESPONDENT

M/s Oyombe for Respondent/Applicant

Mr John Owiyo for Claimant/Respondent

RULING

1. Respondent filed an application for review of judgement delivered on 18th March 2016 in terms of rules 27 and 32 of the Employment and Labour Relations Court (procedure) Rules 2010 on grounds that;

i. There is an error apparent on the face of the record and/or there is sufficient reason for such review in that;

a. In paragraph 15 at page 6, the court indicated that the two items, the subject of theft i.e. a floodlight and a blow mound were very large and required to be carried by a motor vehicle and placed into the vehicle by a forklift; and

b. In paragraph 24 at page 9 of the judgement, the court awarded six (6) monthly salary compensation for the unlawful and unfair termination of employment but in the computation an eight (8) months' salary was awarded.

Issue b

2. It is clear on page 9 paragraph 24, that the court awarded the two grievants six (6) months salary compensation but in the calculation eight (8) months' salary was applied. This is an apparent error on the face of the record and the computation is reviewed as follows:

Bildad Kimani Njeri

i. Compensation equivalent to six (6) months salary (15,664 x 6 = 93,984.00)

Total award is Kshs 130,054.00

Stephen Omondi Meda

i. Compensation equivalent to six (6) months salary

Kshs 62,406.

Total award Kshs 85,116.00

3. With regard to issue (a) the suit proceeded on the bases of the pleading, list of documents and written submissions.

4. The court relied on the uncontroverted submissions by the claimant in paragraph 8 and 9 of the written submissions at page 2 to find that the blow mound machine is not a small item and could only be carried using a vehicle. That it could only be loaded to a vehicle using a crane or a forklift machine.

5. The respondent did not reply to these assertions in its final written submissions filed on 10th November 2015, whereas the submissions by the claimant were filed on 2nd November 2015 and served on the respondent.

6. There is no basis for review of this finding of fact by the court.

7. The final order of the court is as follows;

The application for review is allowed to correct the error on the face of the record in computing compensation for the two grievants as above and the total award is as follows;

i. Bildad Kimani Njeri

Kshs 130,054.00

ii. Stephen Omondi Meda

Kshs 85,116.00

8. The awards are payable with interest at court rates from 18th March 2015, date of the judgement, till payment in full.

9. The respondent to pay costs of the suit excluding costs for this application.

Dated and delivered at Nairobi this 9th day of September, 2016

MATHEWS N. NDUMA

PRINCIPAL JUDGE