



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO 1763 OF 2013

BENARD ALUMASA MAKOLO.....CLAIMANT

VERSUS

RADAR SECURITY.....RESPONDENT

RULING

1. On 13th March 2015, my sister **Onyango J** delivered a judgment in favour of the Claimant in the following terms:

- a) Notice pay.....Kshs. 15,355.00
- b) Salary for 23 days.....11,772.20
- c) Search fees.....500.00
- d) 12 months' salary in compensation.....184,260.00
- e) Service gratuity.....128,982.00
- f) Costs plus interest

2. In this application, the Claimant seeks a review of the judgment. In his Memorandum in support of the application, the Claimant states the following:

- a) That the Court inadvertently failed to order the Respondent to issue the Claimant with a certificate of service;
- d) That the Court inadvertently held that the Claimant did not adduce evidence or submissions on the unlawfully withheld house allowance of Kshs. 214,578 while the Claimant had specifically pleaded this issue in paragraph 15 of the Statement of Claim and had testified that he was paid a lower house allowance than his entitlement under the law.

3. The power of the Court to review its own decision is donated by Section 16 of the Employment and Labour Relations Court Act and Rule 33 of the Procedure Rules. Rule 33(1) provides as follows:

(1) A person who is aggrieved by a decree or an order of the Court may apply for a review of the award, judgment or ruling-

(a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or

(b) on account of some mistake or error apparent on the face of the record; or

(c) on account of the award, judgment or ruling being in breach of any written law; or

(d) if the award, judgment or ruling requires clarification; or

(e) for any other sufficient reasons.

4. I have looked at the judgment delivered by **Onyango J** on 13th May 2015 and find that while the failure to issue a certificate of service to the Claimant is well captured in the body of the judgment, no specific order was given in this regard. It would appear that this is an inadvertent error on the face of the record and I therefore direct the Respondent to issue the Claimant with a certificate of service in accordance with Section 51 of the Employment Act, 2007.

5. Regarding the issue of withheld house allowance in the sum of Kshs. 214,578 the ground for review arises from the finding by the Trial Judge that the Claimant did not prove his claim under this head. In the supporting memorandum, the Claimant makes reference to the decision in ***Ayana Yonemura v Lilwa Kenya Trust [2014] eKLR*** and the ***General Wages Order***.

It seems to me that the if the Judge made an error in this regard, it would fall within the ambit of misapprehension of the law which would then be a ground for appeal and not review.

6. That being the case, the only order I will make is to direct the Respondent to issue the Claimant with a certificate of service.

7. I make no order for costs.

8. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF DECEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Miss Mumbo for the Claimant

No appearance for the Respondent