

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.131 OF 2014

CATHERINE MAKENA.....CLAIMANT

VERSUS

NAARI DAIRY FARMERS CO-OPERATIVE

SOCIETY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th December, 2016)

RULING

The court delivered the judgment in this case on 27.05.2016. Judgment was entered for the claimant against the respondent for:

- a) The declaration that the termination of the claimant's employment by the respondent was unfair.
- b) The respondent to pay the claimant **Kshs.295,500.00** by 01.08.2016 failing interest to be payable at court rates from the date of this judgment till full payment.
- c) The respondent to pay the claimant's costs of the suit.

On 12.07.2016 the respondent filed an application for review of the judgment through its advocates Kiautha Arithi & Company Advocates. The notice of motion invokes Order 45 of the Civil Procedure Rules and Article 159 of the Constitution. The ground for review was that there was an apparent mistake on the face of the judgment as the award was wrongly calculated and arrived at. It was stated that the award was based on claimant's monthly salary pegged at Kshs.15,000.00 whereas the evidence was that the salary was Kshs.10,000.00. The applicant relies upon the demand letter by the claimant's advocates dated 19.07.2014 showing that the claims were computed at Kshs.10,000.00 per month.

The respondent filed the replying affidavit of Muchiri Wa Gathoni Advocate to oppose the application. It is stated that the pleadings were clear that the salary was Kshs.10,000.00 but was enhanced to Kshs.15,000.00 in July 2013. The applicant has not denied the enhanced salary as was pleaded and as per the replying affidavit. The court also considers that the issues raised in the application ought to have been raised at the hearing but that was not done. In the circumstances, the court returns that the application will fail as it does not meet any of the established grounds for review. In conclusion the respondent's application dated 01.07.2016 and filed on 12.07.2016 is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this Friday, 9th December, 2016.

BYRAM ONGAYA

JUDGE