

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT

AT MOMBASA

CAUSE NO. 335 OF 2013

ALI (ALIAS)ALVIN SAFARI NGALA.....CLAIMANT

VERSUS

GLORY CAR HIRE TOURS & SAFARIS MOMBASA LTD.....RESPONDENT

RULING

INTRODUCTION

1. The Claimant has filed the Notice of Motion dated 26.3.2015 seeking to review of the Judgment of this court dated 13.2.2015. The ground upon which the motion is brought is that there is an error apparent on the face of the record related to the computation of the overtime awarded under paragraph 23 of the Judgment.
2. The Motion is supported by the affidavit sworn by the Claimant on 26.3.2015. The gist of the Affidavit is that the court awarded overtime for the period between October 2010 and October 2013 but computed the award of overtime for the period between October 2010 and 23.6.2012. According to him that is an error apparent on the face of record which should be corrected by computing his award for the period upto October 2013 which is 37 months (3848 hours) and not the 21 months (2184 hours) used by the Court in awarding him kshs. 94,521.70.
3. The Respondent has opposed the motion by her Replying Affidavit sworn on 14.4.2015. The gist of the Respondent's affidavit is that the Claimant Ceased working for her on 23.6.2012 and as such he cannot lawfully claim overtime for the period he did not work.

ANALYSIS AND DETERMINATION

4. The issue for determination herein is whether there is an error apparent on the face of the record. The Court agrees with the Respondent that the Claimant ceased to work from 23.6.2012 and not October 2013. He cannot therefore be compensated for no work done. What the court meant under paragraph 23 of the Judgment was that the limitation period was in reference to October 2013 when the suit was filed. That is why the court went back 3 years to October 2010 in compliance with Section 90 of the Employment Act. That interpretation is simple and it required only common sense. The motion is therefore bereft of merits as no error apparent on the face of the record was proved. The motion by the Claimant is therefore an embarrassment to the court, frivolous, vexations and abuse of the process of the court. Any other finding would only be permitting the Claimants' unquenchable greed for unfair enrichment. That cannot possibly happened before this court.

DISPOSITION

5. For the reasons stated above, the Notice of Motion dated 26.3.2015 is dismissed with costs.

Dated, signed and delivered this 19th day of June 2015.

O. N. Makau

Judge