



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2321 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 29th July, 2015)

SAMSON KIMANI GACHARACLAIMANT

VERSUS

AUTO SPRINGS MANUFACTURERS LIMITEDRESPONDENT

RULING

1. The application before court is the one dated 11/5/2015. The Applicants seek orders for review of this court’s judgment given on 4/11/2012. The Applicants aver that they seek review on the grounds that:

- 1. *There is a mistake or error apparent on the face of the record.*
- 2. *The judgment requires clarification.*
- 3. *There are sufficient reasons to review the said Award.*

2. The Applicants aver that in the judgment of the court under paragraph 16, the court found for the Claimant and awarded him judgment totaling 346,571/= less statutory deductions based on judgment of 20,000/= per month.

3. The Applicants however aver that this amounts should have been calculated using the salary of 23,194/= as per the Claimant’s pay slip of May 2012 and this is the figure the Respondent had used to calculate the claimant’s terminal benefits.

4. Based on this amount of 23,194/= the Applicants aver that the payments would be as follows:

- 1. *1 month’s salary in lieu of notice* = 23,194/=
- 2. *June salary for 12 days worked*

$12/30 \times 23,194 = 9,277/=$

- 3. *Leave days 19.5 days*

$19.5/21 \times 23,194 = 21,537.28$

- 4. *Gratuity for the period worked*

3 years = 1 month salary for each

$$\text{year worked} = 3 \times 23,194 = 69,582/=$$

5. *12 months salary as compensation for*

$$\text{unlawful termination} = 12 \times 23,194 = 278,328/=$$

$$\text{TOTAL} \dots = 401,918.88/=$$

$$\text{Less amount awarded} = 346,571/=$$

$$\text{Amount omitted} = 55,347.88$$

5. This is the correction the Applicants seek from this court to award and the Applicants aver that their prayer is fair and just in the circumstances.

6. The Respondents through served didn't file any response to this application. The record reveals that the salary of the Applicant in June 2012 was 23,194/ as per **Appendix SKG 3.**

Under Rule 32 of Industrial Court (Procedure Rules) 2010:

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 a discovery of new an 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, the judgment or ruling requires clarification; or*
 - e. *for any other sufficient reasons.*

7. It is therefore within the law to review the judgment of this court as there is an error apparent on the record. I find the application for review merited and I allow it and correct the final figure in the judgment awarded as **401,918.88/=.**

Read in open Court this 29th day of July, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Chebii holding brief Rakoro for Claimant

No appearance for Respondent