



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 353 OF 2014

BEATRICE ADHIAMBO ODERO..... CLAIMANT

v

SMALLHOLDER HORTICULTURE MARKETING

PROGRAMME (SHOMAP).....RESPONDENT

RULING

1. The Court delivered judgment on 6 February 2015 in which the Respondent was ordered to pay the Claimant Kshs 186,750/- being the wages she would have earned up to December 2014 when her fixed term contract would have lapsed.
2. The Claimant was dissatisfied with the judgment and on 18 March 2015 she filed a motion under urgency seeking a review. The Court directed the motion to be served and the Respondent filed Grounds of Opposition on 26 May 2015.
3. The motion was heard *inter partes* on the same day.
4. The ground stated on the face of the motion for seeking review was that there was an error apparent on the face of the record. From the Claimant's supporting affidavit, it appears that the error apparent on the face of the record was that the Court awarded 6 instead of 12 months wages.
5. The supporting affidavit also advanced different reasons for seeking review and these were that when the Memorandum of Claim was filed, the Claimant did not include all the reliefs (annual leave and relocation allowance).
6. Further, the Claimant deposed that her counsel erroneously forgot to produce a document showing discrimination in payment of wages between the employees.
7. In his brief submissions, Mr. Cheche for the Claimant urged that the Claimant legitimately expected to serve until the end of the SHoMAP programme and therefore should have been awarded 12 months wages.
8. The Respondent opposed the motion and Ms. Khatambi who urged its case submitted that failure to include all prayers did not amount to an error apparent on the face of the record. Counsel urged that the error contemplated by the rules was an error made by the Court and not a litigant's advocate. Counsel cited the case of *Pancras T. Swai v Kenya Breweries Ltd* (2014) eKLR.
9. Counsel further submitted that the Claimant was on a fixed term contract which was extended by 6 months in 2014 and that the Claimant was awarded 6 months wages for the balance of the contractual term and urged the Court to dismiss the motion.
10. The failure by the Claimant to plead her full case; and the Court proceeding to make a determination thereon based on the insufficient material placed before it cannot amount in law to an error apparent on the face of the record.
11. A Court of law is not expected to be a Hercules to know about what is not placed before it.
12. The Claimant has not demonstrated an error apparent on the face of the record to merit review. She failed to plead any entitlement to annual leave and relocation allowance and she cannot gain

- the same through a review application.
13. On the question of 6 and not 12 months wages, paragraph 35 of the judgment was clear that the 6 months wages was based on when the SHoMAP project was meant to close.
 14. The award was equivalent to the balance of wages the Claimant would have earned up to the close of the project and the Claimant did not lay any other basis for seeking wages beyond the life of the project.
 15. In the view of the Court, the Claimant has not satisfied the threshold for a review of the judgment and the motion therefore stands to be dismissed. She was merely attempting to have a second bite at the cherry having failed at the first instance to plead her full case and or to satisfy the Court that her entitlements should have gone beyond the life of the Programme.
 16. The Court orders that the motion be dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 24th day of July 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Cheche instructed by Olaly Cheche & Co. Advocates

For Respondent Ms. Khatambi, Litigation Counsel, Office of the Attorney General

Court Assistant Nixon