



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 968 OF 2013

ELKANA SWETA MAKOKHACLAIMANT

VERSUS

BOB MORGAN SERVICES LIMITEDRESPONDENT

RULING

Begisen Advocate instructed by Cootow & Associates Advocates – for the Claimant

Wetende Advocate instructed by Kaplan & Stratton Advocates – for the Respondent

The claimant filed application dated 2nd February 2015 under Rule 32(3) of the Employment and Labour Relations (Procedure) Rules seeking to review the judgement herein. The issues in dispute is the award of;

- i. Kshs.414,993.00 as pay in lieu of notice;
- ii. Kshs.414,993.00 as compensation for one month's salary; and
- iii. Kshs.194, 103.33 as pay for 9 days worked in May 2013.

The review is sought on the grounds that there was a procedural flaw in the judgment of the court in the above awards noting the claimant's salary according to the pay slip as at 1 April 2013 was Kshs.693, 000.00 per month and not Kshs.414, 993.00 per month as set out in the final orders of the court. The amount of Kshs.693, 000.00 as salary comprises the basic pay at Kshs.519, 750.00 and a house allowance of Kshs.173, 250.00 all being Kshs.693, 000.00 per month. Thus in entering judgment as outlined, there was an apparent error that warrants a review. The amount of Kshs.414, 993.00 was the pay due for May 2013 for the 9 days worked and not Kshs.194, 103.33. The errors in the computations are major and deny the claimant a substantial amount in his judgement.

Other grounds are that the respondent has sought to make a deduction of kshs.253,293.00 for 'lost hours' which was not provided for by the court. This is meant to frustrate the claimant.

In submissions, the claimant states that in the award of the court on 18th November 2014, the court based the assessment of the judgement amounts on an erroneous figure. Instead of taking kshs.693, 000.00 as the salary due, applied Kshs.414, 993.00 leaving out the bulk of dues owed to the claimant. The court found in favour of the claimant and awarded notice pay, compensation and pay for days worked and not paid but used the wrong figures in making final computations hence the application for review of the same. Under the court Rules, there is power to review any errors noted in a judgement or ruling of the court.

The respondent does not dispute that the claimant's monthly salary was kshs.693, 000.00 per month. This based on the errors now apparent on the face of the record, the same should be reviewed and the claimant be awarded;

Kshs.693, 000.00 compensation;

Kshs.693, 000.00 notice pay; and

Kshs.260, 293.49 for 9 days.

In reply, the respondent filed Response on 2nd March 2015 opposing the application for review on the grounds that the respondent delayed in filing the application for review without justification. It is not in dispute that the claimant worked for 9 days in May 2013 but payment for such time worked does not amount to kshs.414, 993 as alleged. Such pay amounts to kshs.254, 293.50.

The respondent also stated that the sum of kshs.414, 993.00 reflected in the May 2013 pay slip was based on the terminal dues payable to the claimant. There is no deduction for 'lost hours' and such submission is meant to mislead the court. The court permitted the deduction of monies already paid to the claimant. That the monthly salary was kshs.693, 000.00.

In submissions, the respondent stated that the amount paid to the claimant in the May 2013 pay slip included basic pay, leave days due and with such payment, what was 253, 293.00. This amount has already been paid to the claimant. The monthly pay is admitted at kshs.693, 000.00.

Determination

Rule 32 of the court Rules allow a review of court orders where there is an apparent error, mistake or sufficient reason and grounds to warrant such a review. With regard to the application by the claimant I note the Claim for 9 days worked in May 2013 is computed by the claimant as amounting to kshs.260, 293.49 and comprise;

Basic pay at kshs.155, 925.00;

House allowance at Kshs.51, 975.00;

Car Maintenance at Kshs.22, 286.16;

Fuel allowance at kshs.15, 536.03;

Utility allowance at Kshs.8, 571.30; and

Security guard Kshs.6, 000.00.

The above computation is confirmed by the respondent save that the same was paid. That a sum of Kshs.253, 293.00 was paid to the claimant in terminal dues. The sum of Kshs.260, 293.00 is hereby confirmed as due for 9 days worked in May 2013.

Looking at the computations in the judgement herein, matters now clarified by the respondent as to the exact monthly salaries due to the claimant at the time of dismissal, the applicable salary in computation of the judgement amount should have been Kshs.693, 000.00 and not Kshs.414, 993.00.

The application is therefore allowed in terms of a review to the applicable monthly salary computation being Kshs.693, 000.00. Notice pay is Kshs.693, 000.00 and compensation is Kshs.693, 000.00 and terminal dues being Kshs.260, 293.00 less what is paid at Kshs.253, 293.00. All other findings remain constant.

Delivered, dated and signed in open Court at Nairobi this 16th day of July 2015.

M. Mbaru

JUDGE

In the presence of:

Lilian Njenga: Court Assistant

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