



IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 111 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 20th November, 2014)

MOSES MAJALE SHAVALEJI CLAIMANT

-VERSUS-

THE PS MINISTRY OF LANDS 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

RULING

The application before court is the one dated 8.10.2014 which is brought through a notice of motion dated the same day. The application is brought under Order 21 rule 2(2) Order 45 and 51 of Civil Procedure Rules plus all other enabling provision of law.

The application is based on the grounds that:-

1. **That there exists an arithmetic error on the face of record in that the claimant was dismissed in June 2010 and not June 2011 and as such a period of 12 months has been left out in the tabulations.**
2. **That 10 months period when the claimant was on half pay has been left out covering the period of September, 2009 to June, 2010 when he was apparently dismissed.**
3. **That in light of the aforesaid it is only fair and just that this honourable court makes a clear tabulation of in light with the whole judgment.**
4. **That judgment can only be altered or added by way of an application for review this application.**

The application was not opposed by the respondents who though served did not appear.

Under Order 45 rule 1(b):-

“any person considering himself aggrieved by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment of the court which passed the decree or made the order without unreasonable delay.”

In this application the applicant contend that this court erroneously calculated the amounts payable to

claimant from June 2011 and not June 2010 omitting a period of 12 months in the tabulation. I find that at page 6 of the judgment I had indicated he was dismissed on 11.6.2010 but in calculating the amount payable I erroneously calculated from 2011 omitting 12 months pay = $12,416 \times 12 = 148,992$.

It is also true that between September 2009 and June 2010 – 10 months, the claimant received half pay which was not included in final tabulation of judgment amounting to $6,208 \times 10 = 62,080$.

Total previously omitted is now Ksh 211,072/=

I therefore allow the application for review and allow the previously omitted amount of Kshs 211,072/= included in final amount awarded so that the final figure now reads $Kshs\ 633,216 + 211,072 =$

TOTAL = KSHS 844,288/=

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HELLEN S. WASILWA

JUDGE

20/11/2014

Appearances:-

Claimant present

N/A for Respondent

CC. Wamache