

**THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISC. APPLN. No. 70/2019
(Arising from LDA NO. 26/2017)**

BETWEEN

MUGISHA M. ROGERS..... CLAIMANT

AND

EQUITY BANK (U) LTD.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Anthony Wanyama

RULING

This is an application seeking review of the decision of this court in Labor Dispute Appeal 26/2017 regarding severance allowance. The application is supported by an affidavit and in opposition an affidavit in reply was filed.

According to the applicant the decision in Labour Dispute Appeal 26/2017 had an error on the face of the record regarding computation of severance allowance payable to the applicant.

In his submission, counsel intimated to court that the interpretation of the holding in **Donna Kamuli L.D.C. 002/2015** by this court in the above appeal was without regard to **Section 87 of the Employment Act** which provides for severance for 6

months and that if court had addressed its mind to this provision of the law, the decision of the court would have been different.

In opposition, counsel for the respondent strongly argued that since the Employment Act did not provide a formula for calculation of severance allowance relying on the agreement between employer and employee, the law relating to severance was as is in Donna Kamuli Vs DFCU and as interpreted in the above appeal until it is set aside on appeal. He submitted that counsel for the claimant did not show any cause for review of the decision in the appeal as prescribed under **Section 17 of Labour Dispute(Arbitration and Settlement) Act 2006 (LADASA)** since the decision was very clear and here there are no new or relevant facts to cause review. According to counsel the proper remedy if the claimant was dissatisfied would be to appeal against the decision and not to apply for review.

Section 87 of the Employment Act provides

“Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following apply”

Section 89 of the Employment Act provides

“The calculation of severance pay shall be negotiable between the employer and the worker of the Labour union that represent them.”

Section 17 of the LADASA provides

“Where any question arises as to the interpretation of any award of the Industrial Court within 21 days from the effective date of the Award or, where new and relevant facts concerning the dispute materialize, a party to the award may apply to the Industrial court to review its decision on a question of interpretation or in the light of the new facts.

Section 82 of the Civil Procedure Act provides

“Any person considering himself or herself aggrieved –

(a) By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred or

(b) By a decree or order from which no appeal is allowed by this Act, may apply for review of judgment to the court which passed the decree or order and the court may make such order on the decree or order as it thinks fit.”

Order 46 Rule

(b) Adds to the above that such aggrieved person

“Who from the discovery of new and important matter of evidence which after the exercise of due diligence, was not in his or her knowledge or could not be produced by him or her 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 any other sufficient reason desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment....”

In the case Attorney General & Others Vs Boniface Byanyima HCMA 1789 of 200 the court while citing Levi Outa Vs Uganda Transport Company (1995) HCB 340 held that the expression

“Mistake or error apparent on the face of the record” refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment.

In the instant case this court in **Labour Appeal No. 26/2017** took issue with the labour officer for awarding severance for 1and1/2 years and interpreted the decision of Donna Kamuli Vs DFCU, LDC 002/2015 to have pegged entitlement to the number of years other than the number of months a person had worked. Consequently a person who worked for less than 12 months would not be entitled to severance at all just like a person who worked more than 16 months but less than 24 months would be entitled to severance for only 1 year. We agree with counsel for the applicant that this interpretation was done without looking at

Section 87 of the Employment Act which entitles a person who has worked continuously for at least 6 months. The above interpretation deprives the person described in **Section 87** of his/her severance. It was therefore a mistake or error on the face of the record that did not require any extraneous matter or any argument to show how incorrect it was. Consequently it was an interpretation worth of Review under **Section 82 and or O46r1** both of **Civil Procedure Act** and **Civil Procedure Rules** respectively. Under **Section 17 of the LADASA** the fact that this court did not look at **section 87 of the Employment Act** was a new and relevant fact that materialized after the decision to be reviewed in the instant application. We therefore hereby review the decision in **Labour Appeal 26/2017** as follows: -

Since **Section 87 of the Employment Act** entitles an employee who has been in continuous service for a minimum of 6 months, in accordance with Donna Kamuli such a person would be entitled to a severance allowance equivalent of $\frac{1}{2}$ a month's salary. It follows therefore that the appellant in the instant case would be entitled on the same principle to an additional of the equivalent of $\frac{1}{2}$ a month's salary for the 6 months not covered in the appeal decision.

The interpretation that Donna Kamuli was pegged on years worked and not months worked was therefore not an erroneous decision only capable to correction on appeal but an error on the face of record capable of being corrected by review by this court and it is hereby reviewed accordingly.

No order as to costs.

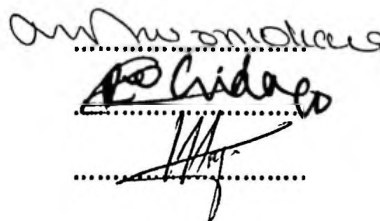
SIGNED BY:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Lillian Linda Tumusiime Mugisha



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Dated 04/04/2019