



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 111 OF 2013**

**JUSTUS MBAYA**

**CLAIMANT**

**v**

**RIVATEX EAST AFRICA LTD**

**RESPONDENT**

**RULING**

1. In a judgment delivered on 13 June 2014, the Court granted a declaration that the termination of the Claimant's employment was unfair and awarded him a total of Kshs 267,800/- less some unexplained Kshs 88,000/- that the Claimant had admitted receiving.
2. On 21 October 2015, the Claimant filed a motion seeking a review of the judgment with a view to ordering the Respondent to repay the Kshs 88,190/- which had been deducted from the judgment sum, and a certificate of service.
3. The motion was served upon the Respondent but it did not bother to file a response or appear during the hearing of the motion.
4. Annexed to the motion was a statement from Moi University Pension Scheme and also a bank statement demonstrating that the Kshs 88,190/- was payment from the pension scheme and not the Respondent.
5. With the failure by the Respondent to respond to the motion and after considering the explanations by the Claimant, the Court is satisfied that the Claimant has satisfied the test for review of judgment on the basis of sufficient reasons as provided for in rule 32 of the Industrial Court (Procedure) Rules, 2010.
6. The judgment is consequently reviewed with an order that the Respondent pays forthwith to the Claimant the said sum of Kshs 88,190/-.
7. The Claimant further lamented that the Respondent had not issued him with a Certificate of Service as ordered. A Certificate of Service is a statutory right of an employee, and the Respondent should issue one within 7 days of service of these orders, otherwise it risks being condemned for unfair labour practice.
8. No order as to costs.

**Delivered, dated and signed in Nakuru on this 22<sup>nd</sup> day of January 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant  
Advocates

Mr. Karanja instructed by Mirugi Kariuki & Co.

For Respondent

Kalya & Co. Advocates (did not appear during motion)

Court Assistant

Nixon