



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**

**CAUSE NUMBER 891 OF 2011**

**KUDHEIHA WORKERS .....CLAIMANT**

**VERSUS**

**KENYA RAILWAYS GOLF CLUB.....RESPONDENT**

**RULING**

1. The Court delivered an Award on 30<sup>th</sup> March 2012. The following orders issued:-
  - a. Termination of the Grievant's contract was substantively and procedurally unfair.
  - b. The Grievant shall be paid by the Respondent 6 months' salary in compensation at Kshs.150,000/=.
  - c. The Grievant shall be paid all terminal dues, in accordance with the Collective Bargaining Agreement in place at the date of termination.
  - d. No order on the costs.
2. The Award has not been satisfied 4 years later.
3. Instead, the Respondent filed an Application for review dated 8<sup>th</sup> July, 2013, while the claimant filed an Application dated 27<sup>th</sup> February, 2015, seeking its tabulation of terminal dues based on the relevant Collective Bargaining Agreement, adopted by the Court for purposes of execution.
4. The two applications have twice been forwarded to the Trial Judge in Mombasa for consideration.
5. Upon perusal of the record the Court finds:-
  - i. The Award was delivered in the absence of the two parties for reasons which are recorded on the 30<sup>th</sup> March 2012.
  - ii. There was an order the Court would notify both parties on delivery and forward copies of the Award to the parties.

- iii. There is nothing on record to show parties were notified as directed.
- iv. As the decision was made at the height of the cross-over from the Ministry of Labour to the Judiciary, it is possible no communication was passed on to the parties for their necessary action.
- v. The application for review is principally on the ground that the Respondent did not get to know of the Court's decision in good time. Other grounds touch on interpretation of the law and evidence given at the trial.
- vi. The Claimant's application to have its tabulation of terminal dues adopted, indicates parties were not able to agree at their own level, what amount was due under the Collective Bargaining Agreement.
- vii. It is unfortunate that even with the Award of the Court to guide the parties on settlement, parties have not been able to settle this dispute which arose in 2009.
- viii. The Court is satisfied from the two applications that parties need to be heard afresh for the Court to determine all the issues in dispute in full.

6. IT IS SO ORDERED:-

**(a) The application for review is allowed on the following terms:-**

**(i) Award dated 30<sup>th</sup> May is reviewed and set aside.**

**(iii) The dispute be heard afresh in Nairobi.**

**(iv) The application for adoption of terminal dues as computed by the claimant is spent.**

**(b) Costs in the cause.**

Dated and signed at Mombasa this 3<sup>rd</sup> day of March 2016

**(signed)**

James Rika

Judge

Delivered this 18<sup>th</sup> day of March 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge