



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO 28 OF 2012**

**JOHN MWANGI KURIA & 165 OTHERS.....CLAIMANTS**

**VS**

**ATTORNEY GENERAL.....1ST RESPONDENT**

**NATIONAL IRRIGATION BOARD.....2ND RESPONDENT**

**RULING**

1. On 30th July 2014, I delivered an award in favour of the Claimants and directed Counsels for the parties to tabulate the amount due to each Claimant. The award amount, which was to attract interest at court rates was to be paid to the Claimants within 60 days from the date of the award.
2. As it turned out, the award amounts were not tabulated as ordered by the Court. The Respondent states that the delay was caused by lack of cooperation on the part of the Claimants. This ruling therefore flows from an application by the Respondent dated 3rd December 2014 seeking review of the order on payment of interest.
3. The application, which is supported by the affidavit of Eng. Daniel Barasa sworn on 3rd December 2014, is based on the following grounds:
  - a. That by its letter dated 12th September 2014 the Respondent forwarded its tabulation to the Advocates for the Claimants for their input, approval and/or comment;
  - b. That by letter dated 22nd September 2014, Counsel for the Claimants indicated that she had instructions to appeal the award of the Court;
  - c. That Counsel for the Claimants did not comment on the tabulation;
  - d. That it is highly prejudicial to the Respondent if the decretal sum continues to accrue interest through no fault of its own.
4. The power of this Court to review its own decisions is donated by Section 16 of the Employment and Labour Relations Court Act and Rule 32 of the Procedure Rules.
5. Rule 32(1) provides as follows:

***32. (1) A person who is aggrieved by a decree or an order of the Court may apply for a review of***

*the award, judgment or ruling—*

- a. *If there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or*
- b. *On account of some mistake or error apparent on the face of the record; or*
- c. *On account of the award, judgment or ruling being in breach of any written law;*
- d. *If the award, the judgment or ruling requires clarification;*
- e. *For any other sufficient reasons.*

6. The order that the award amount would attract interest was made in the context that the amounts payable to the Claimants would be tabulated and paid within a period of sixty (60) days. That deadline was not observed and from the record, it is evident that the delay was occasioned by the Claimants, without good cause.

7. A party cannot be allowed to benefit from their own malfeasance. Overall, I find that there is sufficient reason to review the award of this Court delivered on 30th July 2014. The said award is therefore reviewed by deleting order (e) in its entirety.

8. Each party will bear their own costs.

9. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF  
MAY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mrs. Ligunya for the Claimants

Mrs. Kimani for the Respondent