



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

**AT NAIROBI**

**CAUSE NO. 1601 OF 2013**

**AGNES W. KINUTHIA & 607 OTHERS.....CLAIMANTS**

*VERSUS*

**MINISTRY OF EDUCATION,**

**SCIENCE & TECHNOLOGY.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 25<sup>th</sup> July 2013, Hon. D. K. Njagi Marete delivered a ruling on two Applications dated 18<sup>th</sup> December 2013 and 17<sup>th</sup> January 2014 respectively.

2. The Judge set out the prayers sought in each Application namely, the Applicants in the Application dated 18<sup>th</sup> December 2013, sought to be enjoined as parties in this suit whereas the Applicants in the Application dated 17<sup>th</sup> January 2014 sought Leave to amend the plaint dated 9<sup>th</sup> April 2002 to introduce a new claim couched thus;

*“plus 1<sup>1</sup>/<sub>2</sub> months salary for the number of years worked for each Claimant as severance pay and gratuity respectively made up as follows;”*

3. The learned Judge considered the matter and made a ruling thus;

*“The Applicants come in 12 years down the line to seek an equitable relief. They should be warned that delay defeats equity and also that equity does not aid the indolent.*

*Their delay is by any means inordinate. Entertaining this kind of application would be opening flood gates for awakening lying dogs. This would not be opportune for expedient disposal of litigation in accordance with principle objective of the Industrial Court Act, 2011.”*

4. The Judge then dismissed the application with costs.

5. The Applicants have now brought an Application for review of the Ruling of the Learned Judge ostensibly on the grounds that the judge only made a ruling on the issue of joinder raised in the Application dated 18<sup>th</sup> December 2013 and did not deal with the issue of amendment of the

Memorandum of Claim raised in the Application dated 17<sup>th</sup> January 2014.

6. The nub of opposition to both Applications was limitation of actions on the basis that the Applicants in the Application dated 18<sup>th</sup> December 2013, wanted to be joined in the suit over 12 years down the line whereas the Applicants in Application dated 17<sup>th</sup> January 2014, wanted to introduce a new claim namely, severance pay for over 652 Claimants more than 12 years down the line.

7. Applications for Review are brought to this Court under Rule 32(1) of the Industrial Court (Procedure) Rules 2010.

8. Under the Rule is set out grounds on which the Court may rely on to review its own judgment or ruling. In the present case, the Application was heard by a different Judge because Hon. Marete, J. has since been transferred to Kericho Court and it was not expedient to get the Judge to review the matter.

9. Upon a careful perusal of the Ruling of the Court, it is apparent that although the learned Judge at the beginning set out to consider both Applications, he did not consider the merits or otherwise of the issues raised in the Application dated 17<sup>th</sup> January 2014 namely, Leave to amend the Plaintiff dated 9<sup>th</sup> April 2002 so as to introduce the relief set out in the draft amended Plaintiff.

10. There is clearly “*some mistake or error apparent on the face of the record*” in terms of Rule 32(1)(b) of the Industrial Court (Procedure) Rules 2010.

11. This being the case, it is in the interest of justice that the Application dated 17<sup>th</sup> January 2014 be canvassed afresh before a different Judge as the same was not determined.

12. The Application dated 18<sup>th</sup> December 2013 was carefully considered and determined by the Learned Judge. There are no grounds disclosed in terms of Rule 32, to review the Ruling of the Court with regard to this Application.

**Dated and Delivered at Nairobi this 29<sup>th</sup> day of May, 2015.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**