



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 299 OF 2011**

**HEZEKIEL OIRA.....CLAIMANT**

**VS**

**KENYA BROADCASTING CORPORATION.....1ST RESPONDENT**

**THE BOARD OF DIRECTORS**

**KENYA BROADCASTING CORPORATION.....2ND RESPONDENT**

**RULING**

1. On 4th October 2013, I delivered an award in favour of the Claimant in the sum of Kshs. 5,742,410. The Claimant then filed an application for review of the award on 11th October 2013 on the following grounds:
  - a. That he is entitled to interest on the final award from 23rd June 2010 until full and final payment;
  - b. That he is entitled to a full month's salary for the month of June 2010;
  - c. That he is entitled to an award in respect of an acting allowance for the period between 1st September 2004 up to September 2010 when the Claimant served as Deputy Managing Director;
  - d. That he is entitled to an award in respect of an acting allowance for a period of 146 days being the period between 11th May and 4th October 2006 when he acted as Managing Director, when the then Managing Director was transferred to the Kenya Films Commission;
  - e. That he is entitled to an award in respect of an acting allowance for 120 days during the tenure of David Waweru when he was either on leave and/or was away from duty;
  - f. That no arithmetical calculation was provided as a basis for the finding of Kshs. 64,467 as the award due to the Claimant in respect of acting allowances for the position of Managing Director. The Court should have used the documents produced as a basis for tabulation;
  - g. That the Claimant is entitled to a Certificate of Service.
2. In its Grounds of Opposition filed on 10th December 2013, the Respondent stated that:
  - a. The issues raised by the Claimant were canvassed and fully considered at the hearing of the suit

and an award made on merit;

- b. The application for review amounts to an appeal on a decision of the Court;
- c. The application is vexatious and an abuse of the court process.

3. The powers of the Industrial Court to review its own decisions are donated by Section 16 of the Industrial Court Act, 2011 and Rule 32 of the Industrial Court (Procedure) Rules, 2010.

4. 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;**

5. The Claimant's application did not specify any particular sub rule under Rule 32 (1) and the Court therefore subjected the grounds for review to all the three sub rules set out thereunder. In this regard, no new evidence or error apparent on the face of the record or breach of any written law were cited in the Claimant's application. It seems to me that the Claimant's dissatisfaction with the award arises from the Court's evaluation of the evidence adduced at the hearing and the conclusions drawn therefrom.

6. In my view, that falls within the province of an appeal and not review and as held by the Court of Appeal in the case of *Nguruman Limited Vs Jan Bonde Nielsen & 2 Others [2013] EKLK*, an application for review and an appeal are intended to be alternative remedies. The issuance of a certificate of service which the Claimant did not raise at the trial is a matter of law and the Respondent is directed to comply accordingly. The rest of the application fails.

Each party will bear their own costs.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF FEBRUARY 2014**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Claimant*

.....*Respondent*