



REPUBLIC OF KENYA  
THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1996 OF 2011

Consolidated with

CAUSE NO. 1997 OF 2011

TAILORS & TEXTILES WORKERS UNION.....CLAIMANT/APPLICANT

VERSUS

MOI UNIVERSITY.....1<sup>ST</sup> RESPONDENT

RIVATEX E.A LIMITED.....2<sup>ND</sup> RESPONDENT

RULING

1. What is presently before me for determination is the Claimant/Applicant's Review Application dated 24<sup>th</sup> January 2013. Through it, the Applicant seeks review of the Ruling of 23<sup>rd</sup> November 2012. In the Review Application the Claimant/Applicant submits that the Court ignored all the evidences, submissions, exhibits and annexures placed before it by the Claimant; that Court in its own wisdom reduced the issues in dispute to capacity to be sued and *locus standi*; that subsequent to the above the Court ignored all other real issues and facts which were to be determined and arbitrated upon which were (a) wrongful termination and dismissal of Rivatex employees and (b) violation of redundancy law when terminating the services of workers.

2. The Respondents were opposed and filed grounds of opposition and authorities. The 1<sup>st</sup> Respondent's Grounds of Opposition were to the effect that the application filed is incompetent as the Court cannot sit on appeal of its own decision and the grounds for the review before the Court do not meet the threshold of the provisions of Rule 32 of the Industrial Court (Procedure) Rules 2010. The Respondent's relied on the cases of **National Bank of Kenya v. Ndungu Njau Civil Appeal No. 211 of 1996** (unreported), **Harun Edagwa v Farmers Choice Limited Nairobi HCCC 2862 of 1990** (unreported) **Njoroge & 104 others v Savings & Loan Kenya Limited & Another [1990] KLR 78**, **Njoya & 6 Others v Attorney General & Another [2004] KLR 232** as well as **Jane Wanjiru Gitau v Kenya Power & Lighting Co. Ltd [2006] eKLR**, **Francis Origo & Another v. Jacob Kumali Mungala [2000] eKLR**, **Anders Bruel t/a Queencross Aviation v Kenya Civil Aviation Authority & Another [2013] eKLR** and **Jorim Wahore Marenya v Board of Trustees National Social Security Fund Cause 408 of 2010**.

3. The law on review is settled. There is no review that can lie if what is sought are orders that are outside the purview of a review. Rule 32 of the Industrial Court (Procedure) Rules 2010 is

clear. Rule 32 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; or*

*(d) if the award, the judgment or ruling requires clarification; or*

*(e) for any other sufficient reasons.*

*(2) An application for review of a decree or order of the Court under subparagraphs (b),(c), (d), or (e), shall be made to the judge who passed the decree, or made the order sought to be reviewed.*

*(3) A party seeking review of a Court decree or order of the Court shall apply to the Court in Form 6 set out in the First Schedule.*

*(4) An application under paragraph (3) shall be accompanied by a memorandum supporting the application and the Court shall proceed to hear the parties in accordance with section 26 of the Act.*

*(5) The Court shall, upon hearing an application for review, deliver a ruling allowing the application or dismissing the application.*

*(6) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.*

*(7) An order made for a review of a decree or order shall not be subject to further review.*

4. The issues raised by the Claimant/Applicant and captured at the beginning of this Ruling are thus not grounds for Review but an appeal. Simply put, the Claimant was dissatisfied with the Ruling of the Court and the course open at that time was appeal and because none was sought the matter is at an end.

5. The result of the foregoing is that Application is devoid of merit and is accordingly dismissed with costs to the Respondents.

Orders accordingly.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of June 2014**

**Nzioki wa Makau**

**JUDGE**