



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**(BIMA TOWERS)**  
**CAUSE NO. 6 OF 2013**

**JOHN KAWA ILUME.....CLAIMANT**

**v**

**PAN AFRICA LIFE ASSURANCE CO. LTD.....RESPONDENT**

**RULING**

1. On 4 October 2013 this Court delivered a ruling in which it dismissed a motion application by the Claimant dated 8 July 2013 seeking that Mombasa Senior Principal Magistrate's Court Civil Case No. 833 of 2010, *John Kawa Ilume v Pan Africa Life Assurance Co. Ltd* be transferred to the Industrial Court for hearing and determination.
2. The Claimant appears to have been dissatisfied with the decision and on 12 February 2014 he filed another Motion seeking that the order refusing to transfer the suit before the Magistrate's Court to the Industrial Court be reviewed.
3. The Motion was served upon the Respondent and on 5 June 2014, it filed its Grounds of Opposition. The motion was fixed for hearing on 17 June 2014.
4. When the motion was called up for hearing on the set date Mr. Mwakireti held brief for Mr. Shimakha for the Respondent while Mr. Kongere appeared for the Respondent. The matter was kept aside until 9.40 am when Mr. Mwakireti informed the Court that he had limited instructions from Mr. Shimakha to have the motion determined on the basis of written submissions.
5. The Court directed that the motion should proceed. At that time, Mr. Shimakha's whereabouts were unknown because this had not been disclosed to the Court. When the matter was eventually called for hearing of the application Mr. Shimakha was not present without explanation and the Court allowed the application to proceed. Mr. Kongere submitted on behalf the Respondent.
6. The Court will therefore determine the application on the basis of the grounds on the face of the motion and the supporting affidavit of the Claimant and the grounds of opposition and submissions by the Respondent.
7. Before Court is an application for review of a decision of the Court. Rule 32 of the Industrial Court

(Procedure) Rules, 2010 provide for review. The rule has outlined some 5 conditions to be satisfied to merit a review.

8. In brief the conditions are *discovery of new and important matter or evidence, mistake or error apparent on the face of the record, decision being in breach of a written law, decision requires clarification and lastly on sufficient reasons being given.*

9. The Claimant enumerated 7 grounds on the face of the motion. Without repeating those grounds here, none of them fit in within the 5 parameters outlined in rule 32. The grounds are simply a narration of what happened before the Claimant instituted suit before the Magistrate's Court and the relationship the parties had.

10. The Claimant's supporting affidavit similarly was a narration of the relationship the parties had before institution of the suit and one paragraph deposed that the Court had the power to transfer to itself the suit pending before the Magistrate's Court.

11. The Respondent opposed the motion. Its case was that the Claimant had not satisfied the conditions for a review in that the application did not meet the threshold of the conditions outlined in rule 32. Mr. Kongere submitted there was no new evidence tendered or allegation made of any error. No sufficient reasons had been brought forthwith.

12. Mr. Kongere also submitted that the motion was a rehash of the dismissed motion and that the Claimant had not explained the delay in filing the motion.

13. The Court agrees with Mr. Kongere that the motion does not meet the threshold for review as required by rule 32 of the Industrial Court (Procedure) Rules, 2010. The Claimant did not inform the Court of what new material or evidence it had since discovered after the ruling, the mistake or error apparent on the record or the written law the ruling breached. The Claimant did not suggest the ruling was in need of clarification.

14. Further, the decision sought to be reviewed was delivered on 4 October 2013 while the review application was filed on 12 February 2014. The 4 month delay was not explained.

15. In the view of the Court, the review application is frivolous and has absolutely no legs to stand on and the avenue open to the Claimant is to consider an appeal since the Court had concluded it did not have jurisdiction over the dispute in question.

16. The motion is non meritorious, an abuse of the Court's process and is dismissed with an order that the Claimant meets the Respondent's costs.

**Delivered, dated and signed in open Court in Mombasa on this 18<sup>th</sup> day of July 2014.**

**Radido Stephen**

**Judge**

**Appearances**

Marende Birir & Co. Advocates for Claimant

Muriu Mungai & Co. Advocates for Respondent