



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

PETITION NO. 09 OF 2019

BETWEEN

BERNARD OTIENO OKEBE.....PETITIONER

AND

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

THE ETHICS AND ANTI-CORRUPTION COMMISSION....3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....4TH RESPONDENT

RULING

1. Order 45 of the Civil Procedure Rules provides as follows:

1. (1) Any person considering himself aggrieved-

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

2. In the case of *National Bank of Kenya Limited v Ndungu Njau [1997] eKLR*, cited by the Applicants, the Court of Appeal stated with regard to review that: -

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should require no elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

3. The Respondents did not oppose the application. After due consideration of all the material placed before the court, I am persuaded that the Applicant has satisfied the threshold for grant of an order of review.

4. From the foregoing, the judgment dated 20th February, 2020 is hereby reviewed in the following terms:

1. A declaration be and is hereby issued that failure by the 2nd Respondent to update the criminal records clearing the Petitioner to show that he had been tried and acquitted in Kisumu Chief Magistrate’s Criminal Case No. 555 of 2008 is discriminatory

1. A declaration be and is hereby issued compelling the Respondents jointly and severally to ensure that the acquittal of the Petitioner in Kisumu Chief Magistrate's Criminal Case No. 555 of 2008 is immediately relayed and communicated to the Criminal Records Office at the Director of Criminal Investigations office and the Petitioner's records be updated accordingly

2. Petitioner's claim for damages has not been proved and it is declined

3. 2nd Respondent shall bear the costs of this petition

DATED AND DELIVERED IN KISUMU THIS 12th DAY OF March 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For the Petitioner - Ms Onsongo hb for Mr. Onsongo

For the 1st, 2nd and 4th Respondents - Ms. Gathu hb for Ms Langát

For the 3rd Respondent - N/A