



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. 88 OF 2016**

**COAST BUS (MSA) LTD.....APPELLANT**

**VERSUS**

**JOSEPH ODHIAMBO MAKAMBORA.....RESPONDENT**

**RULING**

1. By a notice of motion dated 1.8.17 brought under Section 99 as read with Section 3A of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules, applicant prays for orders:-

1) ***THAT the Honourable Court be pleased to correct the error made in failing to consider the injury, pain and suffering by the respondent and thereby arriving at the decision which has interfered with the decision of the trial magistrate without any proper justification***

2) ***The Honourable Court be pleased thereafter to allow the applicant's prayer and proceed to dismiss the appellant's appeal***

3) ***THAT costs of this application be awarded in favor of the applicant***

2. The application is based on grounds on the face of the application and is supported by an affidavit sworn on 1st August, 2017 by George Shane Okoth, advocate for the applicant in which he has stated, what in his view, this court failed to consider on appeal.

3. The application is opposed on the grounds set out in the grounds of opposition dated 30th September, 2017 and filed on 3rd October, 2017.

4. I have considered the application in the light of the supporting affidavit and the grounds of opposition, submission filed on behalf of the respondent, Section 3A and Section 99 of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules.

5. Order 50 rule 1 of the Civil Procedure Rules deals with computation of time and is therefore irrelevant to this application.

6. Section 99 of the Civil Procedure Act provides as follows:

***Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.***

7. The applicant has not identified the Clerical or arithmetical mistakes in this court's judgment or errors

arising therein from any accidental slip or omission. What the applicant has done is to raise issues that this court cannot address itself to, since to do so would amount to sitting on appeal in its own judgment.

8. The upshot of the foregoing is that the applicant herein has not met the threshold for the exercise of this court's inherent powers.

9. Consequently, the notice of motion dated 1.8.17 is considered and found to have no merit and it is dismissed with costs to the respondent.

**DATED AND DELIVERED THIS 8th DAY OF March 2018**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistants - Felix & Carolyne

Applicant - N/A

Respondent - Ms Wafula/Mr Akuala