

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 60 OF 2018

MUSA MUENI TSOFA APPLICANT

VERSUS

E.A. RAILWAYS & HANDLING LOGISTICS RESPONDENT

R U L I N G

1. The application dated 11/6/2018 seeks review but has not brought itself within to the established principles to warrant court orders being reviewed under both Section 80 and Order 45 Rule 1, Civil Procedure Act.
2. The only reason advanced for review is financial inability of the applicant. That was a matter within the knowledge of the Applicant when the order was made but was never raised. It cannot therefore be said to be a new and important matter of evidence which could not be produce by him then, due diligence notwithstanding.
3. In any event, in making the order of 17/4/2018, the court exercised a discretion which on the decision in *National Bank of Kenya Ltd vs Ndungu Njau [1997] eKLR*^[1] it is not permissible to base an application for review to challenge a discretionary remedy.
4. For those two reasons, the application lacks merit and the same is dismissed. I make no orders as to costs.

Dated and delivered at Mombasa this 21st day of June 2018.

P.J.O. OTIENO

JUDGE

^[1] The Court said:

“In this instant case the matter in dispute had been fully canvassed before the learned judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the Respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the judge would be slitting in appeal on his own judgment which is not permissible in law”.