



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 356 OF 2014

PAUL MAKOKHA OKOITIPLAINTIFF

VERSUS

EQUITY BANK.....1ST DEFENDANT

HON. ATTORNEY GENERAL.....2ND DEFENDANT

RULING

1. By a Chamber Summons dated 5th June 2015 and filed in court the same day, the plaintiff/applicant seeks from this court under Order 45 of the Civil Procedure Rules and all other enabling Laws Order that:

a) The ruling made by this court on 21st May 2015 be reviewed and set aside.

b) The judgment be entered against the 1st defendant with costs.

2. The grounds upon which the said application is predicated are that:

i. Once the complainant in the criminal court had withdrawn their complaints, and in that court, (sic) no evidence can be adduced from any quarters.

ii. Withdrawal of the prosecution under Section 87A was not possible, and indeed, was a mistake as once the complaints were withdrawn there was nothing to prosecute any more or to do in court.

iii. The complaint of the applicant in reply to the submissions of the counsel for the defendant cannot be ignored by the court(sic).

a)It was wrong the counsel of the respondent/defendant to maintain defective affidavit, once it was brought to his attention, and the request for the deponent to appear for cross examination ignored by the court(sic).

b) Once there was complaint of legal principle involving precedents (whole cases) without principles relied on, it is questionable why reference should be done on order 2 Rule 15 as if the cases are identical on facts and this was the complaint that should not have been ignored by the court (sic).

c) We cannot adduce evidence in a withdrawn case, and Order 2 Rule 15 cannot apply once it is the issue of legality (sic).

d) The only way, if the 1st defendant wants a hearing, is to apply for inclusion of the complainant as 3rd parties.

iv. Section 87A was wrongly invoked, as the prosecution could only charge the complainants, once they had withdrawn the complaints and thereby admitting the preparedness for the consequences.

3. The application is supported by an affidavit sworn by the applicant **Paul Makokha Okoiti** on 5th June 2015 deposing among others and more relevantly that he had complained on both the issues of hearing of this case where the complainants had allegedly withdrawn their complaints or the averments at the final court, and that made hearing illegal *ab initio* (sic); That he complained also on the way counsel for the first defendant presented his grounds of opposition in the case, but these are being ignored by the court, and he was convinced that if the case is properly defined, there cannot be a hearing and what a plaintiff has raised is not dependent on evidence but purely law; That the issue of dismissal of the application be reconsidered and judgment be entered against the first defendant. The application by the plaintiff/applicant is opposed by the 1st respondent/defendant through a replying affidavit sworn on 8th July 2015 by Florence Njuguna a legal officer with Equity Bank (K) Ltd the 1st respondent.

4. In the said affidavits the 1st defendant/respondent contends that the application by the plaintiff/applicant dated 5th June 2015 is misconceived, incompetent, devoid of merit, bad in law and an abuse of the court process as the plaintiff had not set out and or demonstrated any reasonable grounds to warrant granting of the orders sought; That the application does not meet the threshold for review as it has not been shown what error is on the face of the record; or any new or important evidence which after due diligence was not within the knowledge of the plaintiff or could not be produced during the hearing of the application; that the plaintiff has also failed to show sufficient reason for the court to review its orders of 21st May 2015 and that the application falls in the domain of appeal although clothed as an application for review; that matters raised in the application can be canvassed by way of a hearing where exhibits proving the same would be availed and subjected to cross examination; that the applicant has misapprehended the law and facts; that there was no defect in the replying affidavit of the 1st defendant and that the court having exercised its discretion on the power to cross examine a deponent, any aggrieved party should have appealed; that the issue of withdrawal of charges under Section 87A of the Civil Procedure Code is a triable issue to be determined by the trial court; That the contention by the plaintiff that after withdrawal of a complaint no evidence can be given in civil suit is false and unfounded and unsupported by any statutory provisions.

5. The 1st respondent prayed for dismissal of the plaintiff's application.

6. The applicant filed a further affidavit with leave of court on 20th July 2015 challenging the competence of the replying affidavit sworn by the 1st defendant's legal officer and urging that nearly all paragraphs of the said affidavit to be struck out for being defective in law and contending that it was a waste of court's time to call complainants who had withdrawn their complaints in the criminal case and that legally there is no complaint that would require to be heard by this court unless complainants are limited as third parties and that therefore even the deponent of that replying affidavit cannot give evidence in court without having the complainant recalled as there is nothing contestable.

7. On 20th July 2015, the applicant filed what he calls "**issues to be resolved first before hearing the chamber summons**" and maintained that legal officers cannot swear affidavit. That the deponent must be prepared to be cross examined at the full hearing and that cannot happen; she must state the person who allegedly deposited the cheque into the account, and the authorities cited must be respected by the counsel and the court. Secondly, that the only reason for requesting for judgment is that no evidence will

be required or are required, once the complaints were withdrawn by the complainants. Thirdly, the applicant referred this court to the case of **Figuerido V Talbot [1962] EA 167; CC 506/2001 Republic of Uganda (High Court)** and **Mukisa Biscuits V Western (sic) Distributors [1969] EA 696 page 701** and Section 113 of the Penal Code.

8. Parties agreed to dispose of the applicant/plaintiff's application by way of written submissions. The plaintiff/applicant filed his on 1st December 2015 whereas the 1st respondent delayed filing of submissions and was locked out. However, by an application dated 2nd February 2016 under certificate of urgency, this court did on 3rd March 2016 vary its orders of 28th January 2016 and allowed the 1st respondent to file its submissions which submissions were filed on 28th January 2016.

9. On my perusal of the court record, I note that the plaintiff/applicant continued filing other documents including a chamber summons dated 29th September 2015 which he has not set down for hearing. In that application, which is not subject of this ruling save for mention only, he seeks that interlocutory judgment entered against the 2nd defendant be set aside and the applicant be granted leave to enter judgment against the 2nd defendant, after he had realized that leave to enter that judgment was not obtained as required under the Government proceedings Act Cap 40 Laws of Kenya.

10. On 16th November 2015 the plaintiff also filed what he calls "**issues in contest**" and on 15th December 2015 he filed submissions of the plaintiff/applicant. On record is also a "**notice to counsel for 1st defendant**" for Florence Njuguna to give particulars of the plaintiff's acts and omissions that necessitated his inclusion in the criminal case otherwise both of them violated Section 113 of the Penal Code.

11. On 27th July 2015 the plaintiff/applicant filed a document called "**Requirements**" questioning among others, who banked the alleged cheque, the source/cause of the charge, and the bank slip was. In the said document, he referred to and annexed several decisions and quoted Section 87A of the Criminal Procedure Code.

12. In his submissions proper filed on 15th December 2015 the plaintiff/applicant submits that his application seeks to set aside the ruling of justice Msagha Mbogholi dated 21st May 2015. This court notes that on 28th July 2015 Honourable Msagha Mbogholi J disqualified himself from hearing this matter and directed that it be heard by another judge in the Civil Division after the applicant/plaintiff is recorded to have made some disparaging remarks in his documents entitled "**Requirements**" casting aspersions on the integrity of the court. In that document, and it is not clear what it was meant to achieve in this case since it did occasion the disqualification of the trial judge from hearing the application for review of his own order which are subject of this ruling, the applicant wrote in paragraph 2 as follows:-

"We gave (filed) affidavit, earlier and stated the defectiveness of those of the respondent. Why did counsel, the court and the deponent fail to respond to that issue, and how can the judge make a decision on unopposed, unrepudiated defective affidavits? Why are these issues ignored twice by the court. Is the court to act in that way thrice for unopposed/fact, to the detriment of the applicant/plaintiff? If an affidavit, or what is raised by a party, is not replied to – it must be taken as a fact, and the court has to abide by it....."

13. I will however pay attention to the substantive application and return to the issue of several documents by different names being filed by the applicant/plaintiff without leave of the court later. In his submissions, the applicant states that the first round of application was decided by justice Msagha Mbogholi the logical conclusion would only have been judgment for the plaintiff/applicant. That there was a replying affidavit, given by somebody who had no evidence, but was just a counsel in the defendant's service. That this was a mistake of both counsels. That no one simply swears affidavit because he/she is a counsel in the service of the defendant and being advised to do so by the defence counsel and without evidence.

14. It was further contended by the applicant that Honourable Mbogholi ignored submissions by the applicant/plaintiff over the defective affidavits, in the reply to the defendant's mistakes. According to the applicant, there was no defendant's affidavit and that the defendant never responded and that the applicant was not given an opportunity to cross examine the deponent, which was a gross omission which cannot be corrected, and it must be taken by the court that the first application was unopposed, once there was no affidavit after the defective one.

15. Further, that *the judge appears to have thought that the applicant was unaware of his legal rights and when those issues were later brought before the judge, he had to disqualify himself from these proceedings*. Further, that the court should take it that there was no opposition to the 1st application and set aside the ruling of the Honourable Justice Mbogholi Msagha. That the judge cannot stick to Order 2 Rule 15 where the evidence does not exist, and cannot be adduced without usurping the jurisdiction of the lower court, as amply (sic) stated by Lord Sumner in **R V Natt Bell Liquor Ltd [1922]** and reaffirmed by Lord Devlin in **Ridge V Baldwin & 4 Others [1963] ALL ER @ 119**. That the court can only enter judgment for the plaintiff, as the magistrate's Court cannot be resurrected (sic). That the applicant complained to Honourable Mbogholi Msagha that it was wrong for the judge to quote a statute, without comparing facts which would produce invocation of that particular clause of the statute as confirmed by authorities. The applicant cited **Mukisa Biscuits V Western (sic) Distributors [1969] EA 696 @ 701** that there can only be logical decision in this matter, and not evidence, for even when pretrial was invoked, the counsel could not produce any evidence of complainants in the lower court and that cannot be considered here if they were not given in the lower court.

16. The plaintiff/applicant submitted that the bank failed to conduct proper investigations to ascertain the truthfulness of the claim before inviting the police to arrest the applicant, and ignored to apologize when the complaints were withdrawn from court. That there can be no meaningful defence by counsel for the 1st defendant before the pre-trial chamber. That once the complaint was withdrawn, Section 87A of the Penal Code (Sic) could not be invoked, which only confirms the carelessness of the 1st defendant to observe the rule of natural justice against the applicant, when he (the applicant) was being arrested, arraigned in court, and his name smeared without him being given the opportunity to know the case against him. That he never persuaded the defendants to withdraw the case against him and that the 1st defendant had an option of applying to court to include complainants as third parties, which has been ignored by counsels for the 1st defendant.

17. According to the plaintiff, law requires sevenity (sic) and the 1st defendant's counsel had conducted himself in circumstances that should not be overlooked by this court by claiming that the applicant had not presented legal documents in court and failing to define what legal documents meant and what he required. The plaintiff/applicant prayed for judgment as applied for and as affirmed by authorities cited and that Honourable Mbogholi Msagha disqualified himself from hearing the matter after seeing his errors and was not prepared to deny them again.

18. The 1st defendant/respondent's submissions are dated 27th January 2016 and filed on 28th January 2016 as per leave granted by the court on 3rd March 2016. The submissions provide a history of this matter in a clearer form. According to the 1st respondent, the applicant has not satisfied the court that he deserves the orders of review of the orders of Honourable Mbogholi Msagha made on 21st May 2015 as required under Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act. It is submitted that there is no disclosed error apparent on the face of the record as was espoused in **National Bank of Kenya Ltd V Ndungu Njau case[1997] e KLR**.

19. Further, that there is not sufficient reason advanced to warrant review of the orders of 21st May 2015. In addition, the 1st respondent submitted that withdrawal of the criminal case does not raise any sufficient reason for this Honourable court to review the court's ruling dismissing the plaintiff's application.

20. The 1st defendant therefore urged this court to dismiss the plaintiff's application for review dated

5th June 2015 with costs.

21. Before I determine this application, it is essential to give some brief background to this litigation as reflected in the record and summarized by Honourable Mbogholi Msagha J in his ruling of 21st May 2015 which is sought to be reviewed.

22. The plaintiff Paul Makokha Okoiti claims in his plaint dated 10th June 2014 and filed in court on 20th June 2014 that he was arrested and maliciously prosecuted by the 2nd defendant Attorney General at the instance of the 1st respondent Equity Bank (K) Ltd when a stolen cheque was deposited in his bank account he held with the 1st defendant and which he maintained jointly with others and which he states he had nothing to do with. The criminal charges were withdrawn against him under Section 87A of the Criminal Procedure Code which fact of withdrawal is admitted by the 1st defendant in its statement of defence dated 22nd July 2014.

23. The plaintiff therefore by an application dated 8th August 2014 filed an application seeking to have the 1st defendant's defence to be struck out and that judgment be entered against it in his favour as prayed in the plaint. The application was opposed by the 1st respondent and the learned Judge Mbogholi Msagha J by his ruling dated 21st May 2015 dismissed it with costs on the grounds that the defence filed by the 1st defendant raised triable issues that would require the suit to be submitted to full trial, and that the defence as filed was not so hopeless that there would be no question to determine if the matter were to go to full hearing. The learned judge also set out a number of issues arising that in his view were triable thus:

- 1. Whether the plaintiff was aware that a stolen cheque had been deposited in his account jointly held with others.*
- 2. Whether the 1st defendant instigated the arrest and charging of the plaintiff in a criminal case with the offences of forgery, attempted stealing and stealing of the cheque leaf.*
- 3. Whether the withdrawal of the charges conferred the right on the plaintiff to lodge a civil suit against the defendants for malicious prosecution.*

24. The learned senior Judge of this Court judge concluded that the defence by the 1st defendant raised triable issues which could only be resolved by conducting a full trial hence, the dismissal of the application dated 8th August 2014 with costs.

25. It is that order on the application dated 8th August 2014 dismissing the plaintiff's application seeking to strike out the 1st defendant's defence that the plaintiff was dissatisfied with, prompting him to file this application dated 5th June 2015 seeking for a review and setting aside and that judgment be entered in his favour as prayed in the plaint, which application is opposed.

Determination.

26. I have carefully and anxiously considered the application by the plaintiff/ applicant dated 5th June 2015, his supporting affidavit, further supporting affidavit and the 1st respondent's replying affidavit. I have given equal and serious consideration to the applicant's submissions and the submissions by the 1st respondent's together with the cited cases relied on by both parties and statute law as well.

27. The applicable law in applications for review is Section 80 of the Civil Procedure Act Cap 21 Laws of Kenya whereas its handmaiden procedural law is Order 45 Rule 1 of the Civil Procedure Rules which provide:

“ Any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or (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 negligence, 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.”

28. The main issue for determination, arising from the submissions and the above established legal position is whether the applicant/plaintiff has established that his application meets the threshold in the above provisions of the law to warrant a review and or setting aside of the order of 21st May 2015

29. According to the plaintiff/applicant, the learned judge erred in dismissing the application dated 8th August 2014 because there was no question to be tried by the court and the 1st respondent having admitted that it withdrew the criminal charges against him under Section 87A of the Criminal Procedure Code.

30. Further, that since the 1st respondent's counsel's affidavit on record was defective, just like in the present case where the affidavit of the legal officer for the 1st respondent is said to be defective, the learned judge should have found that there was no response given and that he failed to accord the plaintiff an opportunity to cross examine the counsel deponent, which was a gross omission which cannot be corrected, and that this court must therefore take that the first application was unopposed, once there was no affidavit after the defective one.

31. The applicant goes further to castigate the learned Senior Judge of this bench to the effect that the judge, it would appear, that he thought that the applicant was unaware of his legal rights and that when those issues were later brought to the learned judge's attention, he had to disqualify himself from these proceedings, because he saw his errors and was not prepared to deny them again.

32. With utmost respect to Mr Paul Makokha Okoit, judges exist to protest and to promote the rule of law. They do not exist to take advantage of litigants in disputes, or to exploit their ignorance. They are not parties to litigation and derive no benefit from a party losing their claim. They exist to do justice to the parties. And justice to the parties, it is now clear from the applicant's interpretation, is not justice when one loses their claim in court.

33. That justice is only served when a party wins his case, irrespective of its merits. In my humble view, that cannot be justice which courts of law exist to dispense. In the dispensation of justice, fidelity to the law is paramount. A party may present very persuasive facts and arguments but that persuasion may turn out to be nothing more than shadowy drills which have no support in law. In such a case, no court of law can/or should render judgment based on sympathy, especially in civil cases.

34. The standard of proof required is not too high. It is on a balance of probabilities. And in civil cases, there are no convictions and therefore mitigating factors other than in execution process by way of committal to civil jail and or when one is dealing with contempt of court proceedings do not count. It can, therefore, not be true, having examined the ruling of Honourable Msagha Mboghli J made on 21st May 2015 that he made it with the imagination that the applicant was ignorant of his rights and that when the learned judge discovered his errors, he withdrew from hearing the case because he saw his errors and was not prepared to deny them again.

35. There are established legal principles which judges/courts must apply at all times when resolving disputes between parties. There are also open avenues for parties who are dissatisfied with a decision of one judge to either appeal or seek for review. But an appeal or review forum has never been an opportunity to disparage the judge and or attack his integrity in an unjustifiable manner. It is a forum to

correct the wrongs committed by a judge in the exercise of his judicial authority. Judicial authority is derived from the people and it is exercised by the courts on behalf of the people. It therefore follows that no judge or judicial officer is expected to take advantage of the ignorance of a litigant or a party to judicial proceedings. Judicial authority is exercised to promote the values and principles espoused in Articles 10 and 159 of the Constitution and to enhance access to justice as espoused in Article 48 of the Constitution as well as to promote the unlimited right to a fair trial as espoused in Article 50(1) of the Constitution. More importantly, to promote and protect the Constitution and the rights that it champions. Under Article 160 of the Constitution, Judge is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.

36. In seeking to review the orders of Honourable Mbogholi Msagha J, it should never be a forum for disparaging the learned Senior Judge. The record ought to speak for itself. The principles for review of an order are well established. Where a judge has made an error of law, or took into account irrelevant factors or failed to take into account relevant factors in arriving at the decision that he did, or where he was apparently biased, then the way to challenge that decision is by way of an appeal to a superior Court of Appeal.

37. In **National Bank of Kenya Limited V Ndungu Njau CA 211/1996** (unreported) the Court of Appeal correctly held that:

“ A review may be granted where 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 not require an elaborate argument to be established. It will not be sufficient ground for review that another judge could have taken a different view of the matter. Neither 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 the law cannot be ground for review.”

38. In the instant case the learned judge made a conscious decision on the matters in controversy before him and exercised his judicial discretion in favour of the 1st respondent. If he reached a wrong conclusion by sustaining the 1st defendant’s defence because he believed that it raised triable issues which ought to go for full trial and declined to strike out the said defence; and if that conclusion that he arrived at was wrong in law as is being alleged by the applicant, then in my humble view, that conclusion that he arrived at could only be a good ground for appeal but not for review. Otherwise, as has been severally held by the Court of Appeal including the decision in **Pancras & Swai V Kenya Breweries Ltd [2014] e KLR**, I would be sitting in appeal on my learned brother Judge’s judgment which is not permissible in law.

39. The Court of Appeal in **National Bank of Kenya V Ndungu Njai** made it clear that ***“ An issue which has been hotly contested as in this case cannot be reviewed by the same court which had made or adjudicated upon it.”***

40. In the instant case, the applicant has, like in the application of 8th August 2014, attacked the incompetence of the affidavit by the 1st respondent’s legal officer. Even if I was to expunge or strike out that affidavit, which I am unprepared to do so as no legal foundation has been placed before me to warrant such striking out. I would still determine the plaintiff’s application as filed and arrive at the same conclusion. The 1st respondent did not have to respond to this application dated 5th June 2015 as the record speaks for itself and the law is established on what this court can review and what it cannot review. In my most humble view, the arguments by the plaintiff are evidence of what ignorance of legal processes can do to a person. It makes a person live in apprehension at all times, that he will never get justice because the courts and the adverse party who is represented by an advocate will take advantage of him.

41. This court does appreciate that the plaintiff is a *pro se*-litigant. But that self representation is no panacea or license for him to demand that he must get what he asks for. He can only get what is

permissible in law however much he convinces himself that he is on the right. This court does sympathize with the plaintiff who has had to draw and file so many documents on record oblivious of whether or not those documents augment his case. He has spent so much time and money litigating his case through installments that so much judicial time and money is being spend hearing him incessantly seeking to block the 1st respondent from being heard on its defence simply because either it admitted that the criminal charge in the lower court against the plaintiff was withdrawn, or that the affidavits sworn by the 1st defendant's legal officer are defective or that the judgment entered against the 2nd defendant was erroneous as it was entered without leave being obtained etcetera etcetera and in perpetuity.

42. In **Francis Origo & Another V Jacob Kumali Mungala CA 149/2001** (unreported) the High Court dismissed an application for review because the applicants did not show that they had made discovery of new and important matter or evidence as the witness they intended to call was all along known to them and that in any case, the applicants had filed an appeal which was struck out before filing of the application for review. **On appeal, the Court of Appeal** held that:

“ Our parting shot is that an erroneous conclusion of law or evidence is not a ground for a review but may be a good ground for appeal. Once the appellants took the option of review rather than appeal they were proceeding in the wrong direction. They have now come to a dead end. As for this appeal, we are satisfied that the learned commissioner was right when he found that there was absolutely no basis for the appellant's application for review. We have therefore, no option but to dismiss this appeal with costs to the respondent.”

43. In the instant case, it is apparent that despite citing Order 45 of the Civil Procedure Rules on review, the applicant has not attempted to demonstrate that his application meets the threshold for review of the impugned orders. He has not shown what apparent error is on record, and which is not an error of law to warrant a review. Neither has he demonstrated that there is discovery of a 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 then when the order was made. Finally, the plaintiff/applicant has not shown any sufficient reason for the order sought to issue.

44. The plaintiff/applicant has concentrated on the errors of the learned judge for failing to find in the applicant's favour. That, in my view was a perfect ground for appeal and not review. In **Abasi Belinda V Fredrick Kangwana and Another (1963) EA 557**, Bennet J (as he then was) held:

“ A point which may be a good ground of appeal may not be a good ground for an application for review and an erroneous view of evidence or of law is not a ground for review though it may be a good ground for appeal.”

45. On the same point, the authors **Chittaley & Rao** in the **Code of Civil Procedure 4th Edition VOL 3 page 3227** in explaining the distinction between a review and an appeal have stated that

“A point which may be a good ground of appeal may not be a ground for an application for review. Thus, an erroneous view of evidence or of law is not a ground of review though it may be a good ground for appeal.”

46. In the instant case, it seems to me very clear that the plaintiff /applicant, in basing his review application on the alleged failure by The learned judge Honourable Mbogholi Msagha J to:- reject a defective affidavit filed by counsel for the 1st respondent/defendant; and or in refusing to accede to the plaintiff's request for the cross examination of the deponent ; and or in ignoring the legal principles involved in precedents ; and or in refusing to strike out the 1st respondent's defence yet the criminal charges had been withdrawn against the plaintiff/applicant; and therefore in failing to apply the law and facts correctly; the applicant is faulting the decision of the learned judge on a point of law. That, in my humble view, was a good ground for appeal but not a ground for an application for review:

47. In **Pancras T Swai V Kenya Breweries Ltd** (supra), the Court of Appeal made it pretty clear that:

“ If parties were allowed to seek review of decision on grounds that the decisions are erroneous in law, either because a judge has failed to apply the law correctly or at all, a dangerous precedent would be set in which court decisions that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review when such courts are functus officio and have no appellate jurisdiction. Order 44 Rule 1 (now Order 45 Rule 1 in the 2010 Civil Procedure Rules gave the trial court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.” The appellant did not bring his application within any of the limbs nor did he show that there was any sufficient reason for review to be granted. As repeatedly pointed out in various decisions of this court, the words “for any sufficient reason” must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21 Laws of Kenya, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.....”

48. In the present case, besides the errors allegedly committed by the learned judge, which I find can only be challenged on appeal, and not by way of a review of his orders, there is no other sufficient reason advanced to justify a review.

49. In the circumstances, and while conscious that no negative decision satisfies the plaintiff/applicant herein, it is my finding that the decision of Honourable Mbogholi Msagha J made on 21st May 2015 dismissing the plaintiff’s application dated 8th August 2014 seeking to strike out the 1st defendant’s defence is incapable of being reviewed as the applicant failed to satisfy this court on the threshold for review.

50. For those reasons, therefore, I find no merit in the application dated 5th June 2015, I accordingly dismiss it with costs and direct the plaintiff/applicant, who has approached this court seeking for justice, to comply with pretrial requirements under Order 11 of the Civil Procedure Rules to facilitate expeditions disposal of his case as the numerous applications that he is filing only go towards delaying and denying him justice.

Orders accordingly.

51. Dated, signed, and delivered in open court at Nairobi this 14th day of March, 2016.

R.E. ABURILI

JUDGE

In the presence of

Mr PAUL MAKOKHA OKOITI/applicant plaintiff

Miss Kemunto for the first defendant

N/A for 2nd defendant

Adline: Court Assistant