



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NOS. 1192 OF 2003 & 26 of 2004**

**SAMUEL MUCHIRI W'NJUGUNA & OTHERS..... PLAINTIFFS**

**- V E R S U S -**

**KENYA TEA DEVELOPMENT AGENCY LTD..... 1<sup>ST</sup> DEFENDANT**

**THETA TEA FACTORY COMPANY LTD..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is the outcome of the amended motion dated 28.4.2015 taken out by the plaintiff sought for the following orders:
  1. ***THAT the judgement, Order of decree passed on the 9<sup>th</sup> February, 2015 by Judge G. V. Odunga herein be reviewed and, or set aside by the honourable court, in so far as it relates to HCC no. 26 of 2004.***
  2. ***THAT upon review as prayed hereinabove, this honourable court be pleased to enter judgement for the plaintiffs as prayed for in the plaint in HCCC No. 26 of 2004.***
  3. ***THAT there be such other or further reliefs as the court deems fair, just and expedient to grant in the circumstances.***
  4. ***THAT costs abide in the outcome of the application.***
2. The amended motion sets out the grounds it is based. The defendants/respondents filed grounds of opposition to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.
3. I have considered the grounds set out on the face of the motion plus the grounds of opposition. I have further considered the rival submissions and the oral highlights made by learned counsels.
4. It is the submission of Mr. Imanyara, learned advocate for the plaintiffs that Hon. Justice Odunga delivered a ruling on 9.2.2015 which did not state whether the relief sought in H.C.C.C no. 26 of 2004 was granted or not. It is the plaintiffs' submission that there is no final pronouncement of the determination for the case as the judgement entered was for H.C.C.C. no. 1192 of 2003 only. The plaintiffs further aver that there are errors apparent on the face of the judgement arising due to accidental slip or omission to factor in the evidence pertaining to H.C.C.C no. 26 of 2004 into the judgement. The plaintiffs' learned advocate further argued that the defendants explicitly admitted the amount pleaded by the plaintiffs in the plaint and hence they are bound to these pleadings in accordance to Order 2 Rule 6 of the Civil Procedure Rules,2010. Mr. Imanyara further pointed out that the court erroneously omitted to factor in the evidence tendered into the judgement.

5. The defendants on the other hand strenuously opposed the motion on the basis that this is an appeal disguised as an application for review. It was pointed out that Justice Odunga expressed himself clearly that there was no express admission by the defence on the actual figure claimed in H.C.C.C 26 of 2004. The defendants further pointed out that there were no errors apparent on the face of record, nor omissions nor accidental slips to warrant a review.
6. I have considered the rival submissions and the material placed before this court and I have formed the following view about the motion. According to the plaintiffs it is not incumbent upon them to prove the amount or damages claimed therein since the claim admitted did not need to be proved. The plaintiffs have further argued that there is no denial of the deductions by the defendants and the plaintiffs have given sufficient evidence showing the deductions and the total amount. The plaintiffs pointed out that Justice Odunga in his judgment even noted there was no denial that these deductions were actually effected. I have carefully examined the judgment of Justice Odunga and I have noted that the learned judge expressly stated that there was no express admission by the defendants on the actual figure claimed in H.C.C.C. no. 26 of 2004. The learned judge further stated that the plaintiffs had failed to prove the actual amount deducted. The judge's view is in direct contradiction to the view held by the plaintiffs that they were not bound to prove what was admitted. With respect, this is a ground fit to be raised on appeal and not a ground for review. In fact the learned judge opined that the plaintiffs were required to adduce evidence to show the actual deductions. With respect, I agree with the submissions of Mr. Trangei, learned advocate for the defendants that the only avenue for redress for the plaintiffs is to appeal. The learned judge did not want to create any doubt. In part of the judgment he stated that though the plaintiffs contend that the sum claimed in H.C.C.C 26 of 2004 was admitted he was not satisfied that the same was either expressly or impliedly admitted. The learned judge was emphatic that the defendants expressly denied the plaintiffs' claim hence the plaintiffs were put to strict proof.
7. In the end and on the basis of the above reasons, the amended motion dated 28.4.2015 is found to be without merit. The same is dismissed with costs.

Dated, Signed and Delivered in open court this 22<sup>nd</sup> day of April, 2016

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant