



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 66 OF 2014**

**PATRICK NDIRANGU KIBE.....APPELLANT**

**VERSUS**

**MARGARET WANJIKU KAMAU.....RESPONDENT**

*(Being an appeal from the Ruling / Order of the Ag. Senior Resident Magistrate Hon. A. W. Nyoike*

*delivered on 30<sup>th</sup> June 2014 at Nairobi Children's Court Cause No. 113 of 2013)*

**RULING**

1. The Motion dated 5<sup>th</sup> January 2015 seeks for review and the vacating of orders made herein on 28<sup>th</sup> November 2014. The ruling of 28<sup>th</sup> November 2014 had dismissed an application dated 19<sup>th</sup> August 2014 and ordered the return of the lower court's file to that court's registry.
2. The grounds upon which the application is predicated, as set out on the face of the Motion and in the affidavit in support sworn by the applicant, Patrick Ndirangu Kibe, are not clearly articulated; but I understand the applicant to be saying that the court misapprehended the law on consent judgments and therefore came to the wrong conclusion.
3. I have not come across a response to the application by the respondent, whether by way of grounds of opposition or replying affidavit. It would appear though from the respondent's written submissions dated 14<sup>th</sup> April 2015 that the respondent did file grounds of opposition on 23<sup>rd</sup> February 2015. As fate would appear to have had it the said document did not find its way to the court record.
4. It was directed on 20<sup>th</sup> February 2015 that the application be disposed of by way of written submissions. Both parties duly filed their respective submissions.
5. I have duly considered the submissions made by the respective parties. As indicated in paragraph 2 hereinabove the applicant's case is that the court took into consideration things it ought not have taken into account and failed to consider matters that it ought to have considered. There is also the submission that the court misapplied the law on consent judgments. The respondent's submission is that the application does not meet the threshold for review as set out in Order 45 rule 1 of the Civil Procedure Rules, as there is no demonstration that there is an error on the face of the record, discovery of new and important evidence that was not available at the hearing and or other sufficient reason. It is submitted that the matters raised by the applicant are really not the subject of a review, but appeal.

6. I agree with the respondent. The applicant is asking me to review the orders of 28<sup>th</sup> November 2014. A review by a court, seized of civil proceedings, of its own order is governed by the express provisions of Order 45 rule 1 of the Civil Procedure Rules. Review is done on the parametres set out in that provision.

7. The applicant in the Motion before me has not sought to establish that the Motion meets the criteria of Order 45 rule 1. He has made no effort whatsoever to show that there is an error apparent on the face of the record, or discovery of new and important, or other sufficient reason to warrant review of the orders in question.

8. The tenor of the affidavit in support of the application, as well as the written submissions, point to the fact that the applicant is challenging the merits of the decision, that the decision was either founded on the wrong principles of the law or there was a misapprehension of the law. Such do not fall within the realm of review but appeal.

9. I have come to the conclusion that the application before me, dated 5<sup>th</sup> January 2015, is devoid of merit. It should be dismissed and I hereby dismiss the same with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>TH</sup> DAY OF DECEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**