

REPUBLIC OF KENYA

High Court at Kisumu

Civil Appeal 140 of 2011

K-REP BANK LTDAPPELLANT

**VERSUS
GEORGE A. SINO t/a**

JONE BROOKS CONSULTANTS LTDRESPONDENT

RULING

The Notice of Motion dated 26th November 2012 prays that this court reviews its orders made on 15th October 2011. The applicants argues that there was an error apparent on the face of record and that had the court been alive to this it would have arrived at a different decision.

The supporting affidavit of Fredrick Oundo contents that this court on 26th October 2011 found that there was no appeal on record and thus by making the orders of 15th October 2011 this court was in error.

The application has been opposed by the respondent vide the replying affidavit of **Jude Ragot. Mr. Ragot** argued that the application is unmeritorious as there is no basis for it as the court was fully aware that the applicant had withdrawn its appeal.

Having carefully heard the oral submissions, by the parties herein as well as their rival affidavits what I need to determine is whether there was non disclosure of any material facts by the respondent.

By the time this court made its decision of 26th October 2011 there was no appeal or at least no attention was drawn to it of such an appeal.

However the Ruling of 15th October 2012 clearly demonstrate that this court was alive to the fact that the appeal had been withdrawn. It is not therefore entirely true that this was a new and an important fact as the court on its own motion was able to peruse the court file.

Further and in any event all that the respondent was asking in the application dated 6th July 2012 was to “**legitimatis**e” the withdrawal of the appeal by being awarded the costs.

I further agree with the respondent counsels that under the provisions of Order 42 of the Civil Procedure Act there is no provisions of withdrawing an appeal and thus their application dated 6th July 2012 was proper and squarely within the law.

In the premises I do not find any sufficient reason to warrant this court review its decision. There is no new or important fact raised by the applicant. The argument that the Ruling was not signed is insincere for there is a signed copy in the court file.

I therefore dismiss the said application with cost to the respondent. As agreed by both parties this Ruling shall affect file numbers 141, 142 and 143 of 2011.

Orders accordingly.

Dated, signed and delivered at Kisumu this 25th day of April 2013

H. K. CHEMITEI
JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

HKC/aao