



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY COURTS**  
**CIVIL CASE NO. 350 OF 2011**

**KENYA**

**PLANTERS' CO-OPERATIVE**

**UNION LIMITED (in receivership).....PLAINTIFF/APPLICANT**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....DEFENDANT/RESPONDENT**

**RULING**

This court on 30<sup>th</sup> January 2012, made a substantive Ruling on the Chamber Summons dated 8<sup>th</sup> August 2011. That Ruling has not been appealed although there is a Notice of Appeal that the Plaintiff intends to appeal. By a Notice of Motion dated 15<sup>th</sup> of February 2012 the Plaintiff now seeks the Review of the said Ruling of 30<sup>th</sup> January 2012 on allegations that new evidence has emerged which were not within the reach of the Applicant before the said Ruling was rendered.

The application is supported by affidavit of HARVEEN GADHOKE dated 15<sup>th</sup> February 2012 together with its annexures.

The application is opposed by affidavit of VICTORIA MULWA dated 14<sup>th</sup> March 2012.

Parties orally submitted on the issues.

I have considered the entire application and submission of the parties in this matter. I have specifically noted that this application for review actually narrates the issues canvassed in the earlier Chamber Summons dated 28<sup>th</sup> August 2011 and there is really nothing notoriously new in the current application.

In the case of **NATIONAL BANK OF KENYA LTD. - VS - NJAU** the court had to say the following concerning an application for review:-

**“A review may be granted whenever 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 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. Nor 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 law cannot be a ground for review . . . An issue hotly contested cannot be reviewed by the same court which had adjudicated upon it.”**

The above position applies in this matter to a good extent. It is true that some new information may have come into light after the said Ruling. However, the party which is alleged to have provided additional or new information is the Commissioner of Lands. In my aforesaid Ruling of 30<sup>th</sup> January 2012 I had actually directed that the Commissioner of Lands be joined in this suit and I specifically directed the Applicant to do that. Further, at paragraph 2 of page 18 of my aforesaid Ruling I stated thus:-

**“I cannot, at this stage, make a conclusive finding that the balance of the rent is payable to the Commissioner of Lands. That may be an issue to be determined by way of evidence during the hearing of the suit.”**

Since it is now alleged that the additional or new information is coming from the said Commissioner of Lands, it would be more useful if the said Commissioner of Lands spoke as a party to these proceedings. That is, the Commissioner of Lands should speak within, and not outside, these proceedings. Since I have already made that direction, I expect that the Applicant will take immediate steps to join the Commissioner of Lands to this suit so that all the issues raised may be determined without any further ambiguity.

The Applicant also prays for stay of execution of the Ruling dated 30<sup>th</sup> Januarys 2012. The Respondent has stated that they are not executing that yet. However, this kind of assurance may not be satisfactory to the Applicant. There is already a Ruling in the sum of Kshs.3,130,000/= in favour of the Defendant/Respondent. That decree arising from that Ruling has not been executed. To be fair to all parties in this matter I now order and direct that pending the joining of the Commissioner of Lands to this suit, and pending the hearing and determination of the suit, the said sum of Kshs.3,130,000/= plus interests and costs shall be deposited by the Applicant into an interest earning account in the joint names of the Advocates for the parties. The said account shall be open and the said amount deposited into it

within ten (10) days from the date of this Ruling.

The costs of this application shall go to the Defendant/Respondent.

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI**

**THIS 7<sup>TH</sup> DAY OF MAY 2012.**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

*Wafula H/B for Odari for the Plaintiff/Applicant*

*Agware for the Defendant/Respondent*

*Teresia – Court clerk*