

HABEGGER RUTH.....PLAINTIFF

VERSUS

JOSPHAT KUNGU KAMARA.....DEFENDANT

R U L I N G

1. This cause proceeded exparte and judgment was delivered in favor of the applicant on 15th November, 2011. She has now come to court with an application principally under Order 45 rule 1 of the Civil Procedure Rules, seeking review of the court’s judgment to enable adduce extra evidence in the suit. The main ground cited is that she has since the judgment obtained documentary evidence to substantiate the special damage claim which was disallowed by this court in the judgment. That is the thrust of the application and submissions filed by the applicant.

2. The court having considered the application, supporting affidavit and the submissions, is of the view that this application should not be granted for the following reasons: Order 45 rule 1 of the Civil Procedure Rules states as follows:

“[Order 45, rule 1.] Application for review of decree or order.

1. (1) Any person considering himself aggrieved—

(a) 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 diligence, 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.”

3. During the trial, the applicant did tender some documents in an attempt to prove the claim for special damages. However they were in German language. There is no explanation supplied as to why the translation was not procured for the trial. Secondly, the ‘newly’ obtained documents have not been annexed to her affidavit to assist the court determine their relevance and dates.

4. Finally, allowing the application will amount to re-opening the entire trial when the plaintiff who proceeded exparte had sufficient opportunity earlier to tender her evidence and even to seek time to prepare. The application lacks merit and in my view, if allowed would enable the applicant to have another bite at the cherry, to the prejudice of the respondent.

The application is dismissed accordingly.

Delivered and signed this 28th August, 2012 in the presence of:

Court clerk – Evans, Leah.

C. W. Meoli

JUDGE