



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL APPEAL NO. 67 OF 2005**

SIMON NJIRU.....APPELLANT

VERSUS

ANNA WANJIRU & 3 OTHERS..... RESPONDENTS

**J U D G M E N T**

The judgment dated 14.05.07 which the Applicant herein seeks to set aside or have reviewed vide his application dated 15.06.07 arose out of the Appeal filed by the Respondent herein one Simon Njiru. The Appeal was against the Ruling and orders of P.N. Njoroge Resident Magistrate which was delivered on 13.10.05. After hearing the Appeal, the Judge rendered the judgment in question which I have gone through severally and which I find well reasoned and conclusive.

The Applicant herein faults the said judgment and wants me to set it aside or otherwise review it. He put forward the ground that there is an error apparent on the face of the record. One of the errors which is said to be apparent on the face of the record as per ground 9 of the application is that the court failed to find that the Application dated 29.09.05 which was dismissed on a point of law by P.N. Njoroge is still pending for hearing and final disposal. Unfortunately, I do not think that this ground or submission reflects the correct position in law. Once the preliminary objection was upheld and the magistrate found the application in question without merit, there was nothing to heard. The Application was disposed of by way of the preliminary objection. If I may quote from the said ruling the magistrate stated ***“I do not think the Application has any merit and the same was in my opinion vexatious and by allowing the same to be canvassed on merit could amount to an undeserved waste of precious judicial time and energy.”***

Hon. Justice Khaminwa actually cited the above finding by the magistrate and said that the same had no basis. She analyzed that ruling in her judgment. It is not correct therefore to say that the application in question had not been brought to her attention. She was fully aware of the same and went ahead to confirm the earlier Ruling of Hon. Onyina which had categorically stated that the Applicant herein had no practicing certificate in the year 2004. There was therefore no error apparent on the face of the record in that aspect.

In his oral submission in court, Mr. Ngare for the Applicant also submitted that there was an error on the face of the record in that the Respondent herein had lodged the said Appeal without the leave of the court while such leave was necessary. With respect to counsel, that is a point that should have been raised before the court before the Appeal was heard. The Respondents were represented by counsel, he did not raise the issue and the applicant herein who was not even a party in that Appeal cannot raise that point at this instance.

I do not wish to be drawn into the issue as to whether the Applicant herein held a valid practicing certificate or not. The Ruling by Mr. Onyina which I found very thorough dealt with the issue and he gave very cogent reasons for his ruling citing the relevant provisions under the Advocates Act. The Hon. Judge also referred to the said Ruling in her judgment and concluded that ***“Advocate Njiru was not entitled to costs in 2002”***.

The issue of whether Mr. Njiru held a practicing certificate or not cannot be re-opened through this Application. That would amount to filing an Appeal against Mr. Onyina's Ruling through the back door. This is the wrong forum for it. As far as I am concerned that issue is closed and cannot be resurrected through revision of Judge Khaminwa's judgment.

If Mr. Njiru felt that he was condemned unheard, he should have moved the court of Appeal on Appeal and not by way of this revision.

Indeed before I conclude, I wish to mention that Mr. Njiru did file a Notice of Appeal against the said judgment on 14/5/2007. The court has not been told what could have happened to that notice of Appeal. Order 44 Rule 1 (1) is very clear. A person may file for orders of review if he is aggrieved. ***“by a decree or order from which an appeal is allowed BUT FROM WHICH NO APPEAL HAS BEEN PREFERRED”***

The Application for review may not even be properly before this Court. The orders sought are not merited. I find no errors apparent on the face of the record in Judge Khaminwa's judgment to warrant me to interfere with the same. If indeed she made a wrong finding or decision, then such could amount to a wrong exposition of the law which can only be remedied by way of Appeal and not by review. The Application before me lacks merit and I order that the same be and is hereby dismissed. I also order that each party bears his own costs of this application.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated in Embu this 14<sup>th</sup> day of October 2010  
**In presence of:- Mr. Ngare for Applicant.**