

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 42 of 1999

GICHUHI GITHUMBU.....PLAINTIFF

VERSUS

JOHN CERERE MWANGI.....DEFENDANT

RULING

The application dated 5/7/2005 is brought under Section 3A Order XXI Rules 22 (1) and Order XLIV Rule 1 of the Civil Procedure Rules. It is seeking orders of Stay of Execution of the Judgment delivered on 16/3/2005. The same also seeks orders of review of the said Judgment and that the matter be heard de-novo. Having heard both counsel on the same, my finding is that this application is fatally defective and it does not give me the basis to decide on its merits if it has any merit at all. I agree with Mr. Munene for the Respondent that the application has flouted many provisions of the law and this is inexcusable given that it was drawn and filed by a qualified counsel.

Firstly, Order XXI Rule 22 deals with decrees which have been sent to another court for execution. The decree herein if any has been extracted is not a decree that has been sent to this court for execution and so that provision is totally inapplicable in this case.

Secondly, it is trite law now that in an application for review, the decree or order in question must be extracted and annexed to the application – see the case of *GULAM HUSSEIN MULLA JIVANJI etc Civil Appeal No. 29 of 1930*. It matters not that the decree or order in question is in the same court file. The aggrieved party has the duty to correct it and annex it to the application. Without the decree or order in question, this court has nothing to review and this application must fail at this stage. For those 2 reasons, I strike out this application with costs to the respondent/plaintiff.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 17TH day of June 2009.

In presence of:-Mr Njenga for Ndena & Mr. Munene for Respondent

W. KARANJA

JUDGE