



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 1072 of 2000**

**HARPEET SINGH LOTAY..... PLAINTIFF**

**V E R S U S**

**STARLIT INSURANCE BROKERS**

**LIMIT..... DEFENDANT**

**R U L I N G**

By a notice of preliminary objection dated 12<sup>th</sup> February, 2008, the Defendant has raised an objection to the Plaintiff's notice of motion dated 13<sup>th</sup> November, 2007, on the ground that the order made on 4<sup>th</sup> December, 2006, which the Plaintiff seeks through the motion to have reviewed and or set aside has not been extracted or annexed to the motion as required by law. It is contended that in the absence of such extract, it is not clear as to what the application seeks to have reviewed. Relying on the cases of:

- Orchid Pharmacy Limited vs. Southern Credit Banking Corporation Limited & 2 Others (2006) eKLR,
- Combined Mineral Limited vs. Tiomin Resources Inc (2006) eKLR, and,
- Waweru Kamau vs. Joseph Mucheru Gichuki & Mwangi Khanguru (2006) eKLR.

The Court was urged to dismiss the application as being fatally defective.

For the Plaintiff, it was submitted that the order sought to be reviewed was not a final judgment capable of extraction. Counsel for the Plaintiff sought to distinguish the cited authorities contending that they were all in respect of final judgment.

Defence counsel's response was that Section 2 of the Civil Procedure Act, clearly defines an order as a formal expression of any decision of a court which is not a decree and that therefore, any decision of the court is an order.

I have considered the preliminary objection and the submissions made by Counsel. I note that the Plaintiff's application is brought under Order XLIV Rule 1 of the Civil Procedure Rules. That means that Plaintiff accepts that what he seeks to have reviewed is an order made by the court. As submitted by the defence counsel, "order" as defined in Section 2 of the Civil Procedure Act means "the formal expression of any decision of a court which is not a decree." In this case the court record shows that on the 4<sup>th</sup> December, 2006, the court made a decision that the Plaintiff should pay to the Defendant costs for the day assessed at Kshs.15,000/= and that the costs be paid before the plaintiff could next fix the case for further hearing. That is clearly an order capable of extraction. The issue of a final judgment does not therefore arise. Without annexing a copy of an extract of the order sought to be reviewed, the plaintiff's application is fatally defective. He must therefore, go back to the drawing board.

In the circumstances, the application is struck out and dismissed.

Orders accordingly.

Dated, signed and delivered this 12<sup>th</sup> day of March, 2008.

**H. M. OKWENGU**

**JUDGE**