

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 1376 of 1996

NATIONAL BANK OF KENYA.....PLAINTIFF

versus

NGAIPIAN ENTERPRISES..... 1ST DEFENDANT

SAMUEL NJIRAINI NGAMBIA 2ND DEFENDANT

NAOMI WAMBUI NJIRAINI 3RD DEFENDANT

RULING

This is a Notice of Motion dated 23rd January, 2007 and stated to have been brought by Applicants/Defendants under sections 3A and 99 of the Civil Procedure Act, Order XI Rule 22, Order XX Rule 3 (3) and Rule 16, and Order XLIV Rule 1 of the Civil Procedure Rules and all enabling provisions of the Law.

The Judgment in question was delivered on 22nd November, 1999 and the relevant decree issued on 19th January, 2001. It was a Summary Judgment entered by this court after the Defendant's defence was struck out following an inter partes hearing of an application for Summary Judgment, which application was fully contested by the Defendants who therefore had full opportunity to let this court, at that time, know what the Applicants/Same Defendants are telling me now as everything was or ought to have been within the knowledge of the Applicants by then. From what has been brought to my attention during the hearing of this Notice of Motion therefore, the said Notice of Motion is hereby dismissed with costs to the Respondent/Plaintiff for the following reasons:

Firstly, proceedings, Judgment and decree in this case are not covered under order XLIV Rule 1 of the Civil Procedure Rules as there is no proof of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Applicants or could not be produced by them at the time when the decree was passed or the order made or there is no proof of mistake or error apparent on the face of the record or evidence of any other sufficient reason.

Secondly, there was too much delay in filing this Notice of Motion as about seven to eight years passed before the application was filed.

Thirdly, the applicants having filed a notice of appeal against the judgment in question in this matter and admitting in paragraph seven of their further affidavit which they have not amended, that there is such an appeal and there having been no formal and acceptable step taken to remove the admission that the appeal has been filed, the Applicants are not entitled to the remedy of a review under order XLIV Rule 1 of the Civil Procedure Rules.

Fourthly, during proceedings concerning the Notice to Show Cause, the Applicants have only been asking for time to make proposals to satisfy the Judgment without challenging the legality of that judgment.

Fifthly, in law, there is in this suit no decree dated 19th January, 2000 as claimed in prayer number 3 of the Notice of Motion dated 23rd January, 2007.

Sixthly the said Notice of Motion is frivolous, vexatious and an abuse of this court's process as the said Notice of Motion is brought on the basis of provisions of the law which are not available to the Applicants in circumstances of this case and therefore the Notice of Motion is not only wrongfully asking for a review but it is also wrongfully asking for various other orders, all those in addition to the fact that the same Notice of Motion is a disguised appeal making me sit on an appeal against a judgment of my colleague Judge of the High Court when I have no jurisdiction to do so.

Dated and delivered at Nairobi this 27th day of March, 2007.

J.M. KHAMONI

JUDGE