

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Civil Appeal 31 of 1998

LEVI NDOMBI MUKONYOLEAPPELLANT

V E R S U S

KITTS MBATI MUKONYOLERESPONDENT

R U L I N G

In his application by Notice of Motion dated 25/5/05, the Applicant, KITTS MBATI MUKONYOLE, sought under Section 80 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, an order for the review of the judgment delivered on 24/01/05.

In the affidavit in support of the application, the Applicant set out in paragraphs 5, 6 and 7 the grounds on which the application was based. The paragraphs read

5. *“That I state and swear that in deciding the appeal the court did not grant the appellant the chance to be heard at the Appeals Tribunal, but that far from that the court seems to have decided the dispute altogether.*

6. *That I state and swear that in the court deciding the dispute instead of ordering that the same be now heard afresh at the Provincial Appeals Committee, this Constitutes an error apparent on the face of the record that calls for review, as advised by my counsel on record which advice I verily believe to be correct.*

7. *That it is for this purpose that I swear this affidavit in support of my application herein so that the parties can return to the Western Province Tribunal Appeal Committee to be heard on the appeal in respect of which the court made a finding that had been decided without hearing the Appellant for not having been served.*

The application was opposed by the Respondent/Appellant who contended that the application had no merit and relied on his replying affidavit sworn on 14.9.05.

Mr. Mukavale, the learned counsel for the applicant relied on the applicant’s affidavit in his submission, while Mr. Shitsama, learned counsel for the Respondent, in relying on his clients replying affidavit also submitted that there were no grounds shown to warrant the review sought and further, that the issue of remittance of the dispute to the Tribunal did not arise.

I have carefully perused the application and its supporting affidavit as well as the replying affidavit. I have also given due consideration of the submissions made by both counsel.

Section 80 of the Civil Procedure Act gives the court unfettered jurisdiction to review a decree or order from which no appeal has been preferred although such appeal is allowed and from decrees and orders from which appeals are not allowed. The court has under the section power to review for good cause shown and where the ends of justice so demand including any of the reasons set out in Order 44 of the

Civil Procedure Rules. Order 44, on the other hand, confines the review to the grounds therein stated. In the present application, the applicant has not shown that there exists any of the grounds set out in Order 44 nor has the applicant satisfied the court that there is material which was not brought to its attention before the judgment was delivered or which the court overlooked in error and which, if considered, would result in a different decision. I am not persuaded that the application has merit and for that reason I dismiss it with costs to the Respondent.

Dated, signed and delivered at Kakamega this 18th day of May.. 2006

G. B. M. KARIUKI

J U D G E