



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
Civil Case 561 of 2003
ORCHIRD PHARMACY LTD. PLAINTIFF
VERSUS
SOUTHERN CREDIT BANKING CORPORATION LTD.
MUGA AUCTIONEERS & GENERAL MERCHANTS
HIGH ENERGY SOLUTIONS LTD. DEFENDANTS
R U L I N G

This Notice of Motion, dated 9/6/04 seeks the following orders:-

- 1. Already spent.**
- 2. Already spent.**
- 3. Review of the orders delivered on 8/6/04 and thereby allow the Plaintiff's application.**

The application is supported by the Affidavit of William Ochanda Onguru, of even date. The application is brought under Order 21 Rule 22 and Order 44 of the Civil Procedure Rules and Sections 80 and 3A of the Civil Procedure Act; and is on the grounds that:-

- (a) Unless the said orders are granted, the applicant stands to suffer irreparable and/or substantial loss.**
- (b) There is an error or a mistake on the face of the record.**
- (c) There is sufficient reason to do so.**

In opposition to the application, the 3rd Defendant/Respondent avers that: the application is an after thought and brought in bad faith; the application is only intended to delay justice to the 3rd Defendant who is an innocent purchaser for valuable consideration; the court deliberated and came to a competent and balanced ruling; the application is intended to have this court sit as an appellate court on its own judgment; there is no error apparent on the face of the ruling; it is prima facie that 25% was paid at the fall of the hammer; the application is an abuse of the process of the court and should be dismissed with costs to the 3rd defendant.

Perusing through the pleadings herein, and the authorities cited, both Statutory and decided cases, there are many reasons upon which this application cannot succeed. First, every application for Review must have attached to it, the extracted decree or order sought to be reviewed. In **BERNARD GITHINJU vs. KIRATE FARMERS CO-OPERATIVE LTD. – HCCC No.32 of 1974**, Nyarangi, J. stated the law that without the decree, there is nothing upon which the court's judgment can be reviewed. Failure by the applicant to extract a formal decree is fatal to the application and it should, on that count fail.

I wholly adopt that statement and holding in this particular application. I have seen no extracted decree or order from the decision sought to be reviewed.

An applicant for review cannot be aggrieved by the entire judgment. Such party can only be aggrieved by the order or decree therefrom, and that is what must be extracted and attached to the application.

Here, that has not been done, and I have no way of knowing what aggrieves the applicant.

Secondly, the applicant's counsel submitted that the court did not make a finding on the issue of the payment of the 25% deposit upon the fall of the hammer at the public auction.

From the record, the above submission cannot stand because the precise issue is dealt with at page 6 of the Ruling. If the applicant feels that the court applied the wrong or erred in law, the remedy lies on appeal, not review. Further, under Section 7 of the Civil Procedure Act, if the matter has been raised but not expressly granted is deemed to have been refused. The point was clearly addressed at page 6 of the Ruling therein.

I do not think it necessary to give more reasons why the application herein cannot succeed and is rejected. Over-kill is as bad as normal language as it is in law.

For all the above reasons, this application for review is hereby dismissed. Applicant to pay the costs of this application to the Respondent.

DATED and delivered in Nairobi this 27th day of May 2005.

O.K. MUTUNGI
JUDGE