

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE No.430 OF 2001

1.JANE AKELLO VOCKE.....1ST PLAINTIFF
2.HORST VOCKE.....2ND PLAINTIFF
=V E R S U S
TRANS-NATIONAL BANK LTD.....DEFENDANT

R U L I N G

The Applicant decree debtor seeks Review under Order XLIV rule 1 and Section 3A and Section 63(e) Civil Procedure Act, Cap.21.

Specifically, it is sought to nullify as sale of disputed property as the same was sold by private treaty at below market price. Also prayer to review judgment entered by consent of parties on 28/11/2001.

I have perused application together with supporting affidavit. I do not see any evidence to warrant a review under Order 44 Civil Procedure Code of consent judgment or any reason to review the sale complained of. The new purchaser is not a party to this suit. His rights would be prejudiced if orders were to be made against him.

As for reviewing consent judgments it is trite law that evidence be produced as would entitle a court of law to set aside a private contract. No such evidence is disclosed here. In fact the Defendant Horst Vocke has in a previous affidavit admitted that both him and the 1st Defendant did instruct their advocates "Melissa Moragi Advocates" to enter into the consent judgment complained of.

I therefore do not find any merit in this application.
Same is dismissed with costs.

Dated this 29th day of July, 2004.
JOYCE KHAMINWA
J U D G E