



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 513 OF 2001**

**FINSHERMANS LEISURE INN LTD ..... 1ST PLAINTIFF**

**LEISURE TRADING ..... 2ND PLAINTIFF**

**LEISURE CARHIRE & TOURS SAFARIS LTD..... 3RD PLAINTIFF**

**VERSUS**

**GIRO COMMERCIAL BANK LTD. .... 1ST DEFENDANT**

**G.A. DATOO & CO. LTD. .... 2ND DEFENDANT**

**R U L I N G**

This application is clearly an abuse of the Court Process. It is incompetent and has no basis whatsoever. It is an attempt by the applicant to impose its demands that he pays the debt due by installments of KSh.50,000 (as is in the application) or KSh.75,000/- (as I am now being told from the bar) notwithstanding the court's decision. The following are the reasons why I do feel the application cannot succeed.

First no order which I am being asked to review has been annexed.

This is now trite law that the court can only review an order or a decree (in case of a judgment). The party seeking a review must show that it is aggrieved by an order or a decree (see Order 44 Rule 1). It is in law the duty of the party seeking a review to draw up the same order or decree and annex it to the application. This is the holding in the case of **Gulamhussein Mulla Jivanji & Another vs. Ebrahim Mulla Jivanji & Another (1930) EACA 4**. It was held there as follows:

*“That it is the duty of a party who wishes to appeal against or apply for review of a decree or order to move the court to draw up and issue the final decree or order”*

Secondly, there is nothing shown by the applicant that a new and important matter or evidence has been discovered. The Affidavit which was rejected was sworn by agent of the Applicant. It was the duty of the applicant and its advocate to ensure that they filed a valid affidavit. There is no mistake or error shown on the face of the record and there is no any other reason shown for the application.

In my mind, this application was clearly brought to buy time and this is sad to say the least. I do feel with

every respect that the Applicant must have been ill advised on this matter. I will say no more but I do hope I will not see such applications in future. Already it has been used to buy some time and that is bad enough.

Application is dismissed with costs to the Respondent. Orders accordingly.

**Dated and Delivered at Mombasa this 26th Day of March, 2003.**

**J.W. ONYANGO OTIENO**

**JUDGE**