

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 259 OF 2001 (O. S.)

WILSON SAINA.....PLAINTIFF

VERSUS

JOSHUA CHERUTICH trading as

CHERUTICH & COMPANY LIMITEDDEFENDANT

RULING

This is an application under Order XLIV Rule 1(1) and 2 and Order XXXVI Rule 12 of the Civil Procedure Rules (hereinafter referred to as “the Rules”) and Sections 3A and 63(e) of the Civil Procedure Act. In the main, the Defendant seeks the following order:

“3. THAT this Honourable Court be pleased to review and vacate or set aside its orders made on October 19, 2001 to the extent that they required the Defendant to deposit Kshs. 155,361/= in Court within 30 days.”

Mr. Karanja who argued the application on behalf of the Plaintiff raised two points of law one which, in my view, is central to the determination of the application. Primarily, he submitted that the failure of the Defendant to annex the order sought to be reviewed rendered the whole application fatally defective.

I respectfully agree. In order to succeed on an application for review under Order XLIV of the Rules, one must show that he is aggrieved by a decree or an order. This cannot be done without annexing the decree or order for the Court to determine that point. I, therefore, agree with my Learned Sister the Honourable Lady Justice Jessie Lesiit’s conclusion in *Gatimu Farmers Ltd. v. John Njoroge Ndungu NAKURU HCCC 197/01* that failure to annex the order or decree sought to be reviewed renders an application for review fatally defective. On this conclusion alone, I do not see the need to consider the Defendant's application further as no useful purpose will be achieved thereby.

I, therefore, strike out the Defendant’s application dated October 31, 2001 with costs to the Plaintiff.

Dated and Delivered at Nakuru this 17th day of September, 2003.

ALNASHIR VISRAM

JUDGE