



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO.1027 OF 2000**

EXTRACRAFTS AGENCIES LIMITED PLAINTIFF

VERSUS

BARAGWI FARMERS COOPERATIVE SOCIETIES LTD. DEFENDANT

RULING

The applicant who is the defendant in this suit has lodged this application under O. XLIV Rules 1 and 2 of the Civil Procedure Rule for the review and setting aside of a judgment of this court entered against it on 11.2.2000. The application is supported by an affidavit sworn on 10.11.2000 by Leonard Njoka, the Secretary Manager of the defendant.

As revealed by the affidavit of Mr. Njoka, the grounds upon which the application is made are:-

- (a) That the defendant's two motor vehicles have been attached by a firm of auctioneers known as Green Bells Auctioneers and that has allegedly caused considerable unrest among the general membership;**
- (b) That the coffee farmers who are members of the defendant have been hard hit economically and are experiencing very difficult times.**
- (c) That the defendant was not informed of the hearing date.**
- (d) That the defendant denies being indebted to the plaintiff in the sum of Shs.1,866,000/= as alleged or at all.**
- (e) That the defendant has paid all dues to the plaintiff.**
- (f) That the defendant will apply for third party notice to issue to a certain Mr. H. K. Njange.**

On the basis of the above alleged grounds the defendant says that in the interest of justice the judgment entered by this court on 11.2.2000 should be reviewed and set aside.

The concept of justice is a two-way traffic. In every case, the court must endeavor to be just and fair to both sides. That is indeed why there are in place very elaborate rules of procedure to guide the courts in arriving at that elusive ideal of justice.

With regard to the process of reviewing and setting aside a judgment that has already been entered, the Civil Procedure Rules (O. XLIV Rule 1) provide the tests to be followed in determining whether or not to

review a decision. Any decision that does not meet the requirements of the Rule cannot be just; on the contrary it would be irregular. The Rule provides:-

“1. (1) Any person considering himself aggrieved: -

(a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

The key words and phrases are – ‘discovery of new and important matter or evidence, some mistake or error apparent on the face of the record or for any other sufficient reason ...’

I have set out above the grounds upon which this application has been made simply to demonstrate how far the applicant was from satisfying the requirements of O. XLIV Rule 1. There is, for instance, no claim that there has been discovery of any new and important matter or evidence; no allegation of any mistake or error apparent on the face of the record and certainly no other sufficient reason has been shown. Instead of dealing with the matters specified in O. XLIV Rule 1, the applicant’s Secretary Manager in his affidavit in support of the application has delved into issues which are wholly irrelevant and unconnected with what the court should be considering in an application of this nature. The application is therefore incompetent and cannot possibly succeed. It is for those reasons dismissed with costs.

Dated at Nairobi this 18th day of January, 2001.

T. MBALUTO

JUDGE