REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1729 OF 1997

STANDARD CHARTERED BANK KENYA LTD. ……. PLAINTIFF

VERSUS

SAMUEL NKONGE KIRERA

NATIONAL BANK OF KENYA LTD.

SEBASTIAN KIOME MUTHAURA …… DEFENDANTS

R U L I N G

Before me is a Notice of Motion dated 5th July 2001 and brought under Order XLIV Rules 1, 2 and 4 and Order L Rule 1 of the Civil Procedure Rules pray8ing for Orders that

"2. --- this Honourable Court be pleased to review the ruling of 19th February 2001 on the application to set aside a decree given on 4th of January 1999 and issued on 28th March 2000.

3. --- a sum of Kshs 800,000/= the subject matter of this suit be forthwith released to the applicant/1st defendant plus accrued interest thereof at Commercial rate.

Prayer one was for a certificate of urgency while prayer four was for costs.

The questioned ruling dated 19th February 2001 was delivered after hearing the Applicant's Chamber summons dated 26th January 2001 praying for a stay of execution and the setting aside of an ex-parte judgment dated 4th January 1999 on the ground that the Applicant, as the First Defendant in this suit, had not been served with the plaint and summons to enter appearance before the said ex-parte judgment was entered.

Like to-day, the Applicant filed and prosecuted that Chamber Summons in person, Mr. Ougo appearing for the Respondent and there was full hearing in which I dismissed the Applicant's Chamber summons having given my reasons why I was dismissing that Chamber summons.

In this Notice of Motion dated 5th July 2001 before me for review of my ruling dated 19th February 2001 therefore I expected the Applicant to ring to my notice.

"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 ruling was made, or "some mistake or error apparent on the face of the record", or to bring any other sufficient reason to satisfy the requirements in order XLIV Rule 1 of the Civil Procedure Rules in order to enable me grant the Orders sought in the Notice of Motion. Recording the grounds set out in Order XLIV Rule 1 but I hoped he was going to rely on the grounds in Order XLIV Rule 1 during the hearing bearing in mind that the Applicant was not, to my knowledge, a qualified advocate.

To that end I patiently listened to the Applicant as he made his submissions at the hearing of the Notice of Motion up to the end of the proceedings only to learn that all that the Applicant accomplished was the restating of the case he had put before me when I was hearing the Chamber Summons dated 26th January 2001 and thereafter to proceed to end his submissions by criticizing and condemning my ruling dated 19th February 2001 thereby making me realize that all I was doing was sitting in and hearing an appeal against my own ruling dated 19th February 2001. Perhaps the Applicant does not know that I have no jurisdiction to do that.

The Applicant has told me he is not a lawyer and I would like to believe that he is not a lawyer although he has handled my ruling of 19th February 2001 is self – explanatory and the reasons why I dismissed the Applicant's Chamber Summons are sufficiently stated in that ruling and there has been nothing new brought to my attention within the meaning of Order entitle me interfere with that ruling and in an effort not to confuse the Applicant if he is not a lawyer, I will simply end this ruling by quoting a passage from the judgment of the Court of Appeal in Civil Appeal No. 211 of 1996, NATIONAL BANK OF KENYA LIMITED vs. NDUNGU NJAU at page 8 middle paragraphs (unreported) which I feel expresses more sanctly what I should have said as follows:

"A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, if could be a good ground for appeal but not for review. Otherwise we agree that the learned judge would be sitting in appeal, on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same Court which had adjudicated upon it".

Accordingly the Applicant's Notice of Motion before me dated 5th July 2001 be and is hereby dismissed with costs to the Respondent.

Dated this 6th day of November 2001.

J.M. KHAMONI

JUDGE