



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 2862 OF 1990

HARUN EGADWA ..... PLAINTIFF

VERSUS

FARMERS CHOICE LIMITED ..... DEFENDANT

R U L I N G

This is an application for review of the judgment delivered on 7th April, 2000. The application is brought on the grounds that:-

"1. There is a mistake or an error on the face of the record.

2. There is no basis upon which the judge proceeded to award Kshs.102,080.00 to the plaintiff as the defendant's contribution to the pension scheme.

3. Alternatively, the Judge did not consider that the defendant had paid to the plaintiff's advocates Kshs.71,257.60 in respect of the Pension contributions".

Mr. Gitonga for the applicant argued that the Court did not take into account the payments made to the respondent and in his view the total amount to be awarded to the respondent should have been Shs.83,608/-. He pointed out that this was an error apparent on the face of the record.

Miss Nyambu for the respondent sought to rely on her filed grounds of objection which were as follows:-

"1. THAT the said application lacks merit and is an abuse of the court process.

2. THAT in arriving at the judgment delivered on 7th April, 2000 the learned Judge put into consideration all facts on record and the evidence adduced at the hearing of the case.

3. THAT asking the Judge to review the said judgment is to ask the Judge to review his own judgment delivered in good faith and in consideration of all facts and circumstances of the case. 4. THAT the defendant's application lacks merit and should be dismissed with costs to be paid to the plaintiff".

Order XLIV r. 1(1) of the Civil Procedure Rules 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 judgment to be reviewed was delivered on 7th April, 2000 and this Notice of Motion was filed on 20th April, 2000.

Hence I am satisfied that the application for review was made without unreasonable delay. This application is based on the fact that there is an error on the face of the record. But when Mr. Githonga made his submissions, he appeared to be revisiting his earlier arguments on the issue of calculation.

If there was an error on the face of the record, this should have been easy to point out without elaborate arguments. In *National Bank of Kenya Ltd. v. Ndungu Njau - Civil Appeal No.211 of 1996* (unreported) the Court of Appeal had the following to say on question of review:-

"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 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".

Bearing the above in mind and taking into account the submissions of Mr. Gitonga, I find that what is being sought is not a review but an appeal. The applicant was dissatisfied with my decision. There is no error on the face of the record but the applicant would like me to change the amount awarded from Shs.102,080/- to 83,608/-. That cannot be achieved by way of review but by the applicant filing an appeal.

In view of the foregoing, I find no merit in this application and the same is dismissed with costs to the plaintiff/respondent.

**Delivered and dated at Nairobi this 23rd day of June, 2000.**

**E. O. O'KUBASU**

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**JUDGE OF APPEAL**