



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARSEN**

**CIVIL APPEAL NO. E001 OF 2020**

**BASHIR ABDALLA.....APPELLANT**

**VERSUS**

**PETER LUGANJE KARISA.....RESPONDENT**

*(Being an appeal from the Ruling of Hon. E.Kadima - Senior Resident Magistrate*

*Court at Garsen dated and signed and delivered on the 10<sup>th</sup> August, 2020 in PMCC No. 33 of 2019)*

**Coram: Hon. Justice R. Nyakundi**

**Kokul, Fozah & Partners for the Appellant**

**Wambua Kilonzo & Co. Advocates for the respondent**

**R U L I N G**

Once again Learned Counsel Mr Wambua for the Respondent in the applications filed by the intended appellant contends that the preliminary objection as to jurisdiction was never addressed by the Court. The Respondent's Counsel points out that notwithstanding the Court's power to grant the relief sought by the Appellant there was no determination on the issues contained in the preliminary objection. Following the grievance by the Learned Counsel, I took the liberty to peruse the record and the impugned Ruling dated 15<sup>th</sup> December, 2020. In the proceedings together with the Ruling under review the objection so raised was conclusively determined.

Keeping the principles as laid down under section 7 of the Civil Procedure Act the concerns, raised by Counsel viewed from either angle is in all practical intents and purposes *res judicata*. Therefore looking at Order 21 of the Civil Procedure Rules no court which has signed its judgement and final order disposing over a case shall alter save otherwise under review jurisdiction as expressly provided for under section 80 of the Civil Procedure Act and under Order 45 rule 1 of the Civil Procedure Rules. At this stage the Court has no jurisdiction to look into the matter afresh. The request is therefore respectively denied.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 16<sup>TH</sup> DAY JUNE, 2021.**

.....

**R. NYAKUNDI**

**JUDGE**

**NB:** In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

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