



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO. 47 OF 2019

AK suing thro' father AKK.....APPELLANT/APPLICANT

VERSUS

PK.....RESPONDENT

RULING

1. This is a ruling on the Notice of Motion dated 13/2/2020 and filed on 4/3/2020. The same is expressed to be brought under **sections 1A, 1B and 3A of the civil procedure Act and Order 45 of the Civil Procedure Rules**. The applicant sought an order for the review of the Judgment of Hon. Justice S. Chitembwe given on 3/12/2019 pending the hearing and final judgment of the applicant's appeal.

2. The application was based on the grounds on the face of the Motion and on the supporting affidavit of **AKK** sworn on 13/2/2020. He contended that he was aggrieved and dissatisfied with the judgment/decree delivered on 3/12/2019. That the minor who is his daughter has been subjected to a lot of hardship in the hands of her maternal grandmother and had never been in the hands of the respondent.

3. He further contended that, the respondent never delivered any pleadings nor a statement of defence before the trial court. That the inordinate delay in filing the appeal was brought by the loss of the physical file and the disappearance of the respondent. He argued that much as the pleadings showed the defendant to be **PK**, it was one **JK** is the one who made the defence in the matter.

4. That the child was taken from his custody through a letter from the children's office in favor of a stranger. The child had never lived with the respondent and there was therefore no question that the applicant was not paying for maintenance.

5. The application was unopposed. Although there were directions that the parties file their submissions, as at the time of writing the ruling, none of the parties had filed any submissions.

6. This is an application for the review of the judgment dated 3/12/2019.

7. **Order 45 Rule 1 of the Civil Procedure Rules** provides the parameters upon which a review can be ordered. These are; when there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's 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. Additionally, the application must be made timeously.

8. In **Tokesi Mambili & Others vs. Simion Litsanga [Ksm CA No. 9 of 2001]**, the Court of Appeal delivered itself thus, on **Order 45 Rule 1 of the Civil Procedure Rules**: -

“Hence in order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason”.

9. I have carefully considered the record, the matters that the applicant has raised are the very same ones which he had placed before the Court at the hearing of the appeal. There is no new evidence or matters which have been raised, that were not within his knowledge at the time the appeal was heard. The only new evidence was the order for leave to appeal. That in my view is not an important matter to warrant a review.

10. It should be noted that the appeal was determined on the merit of the case and not on the filing of the appeal without leave.

11. There has not been shown that there is any error in the impugned judgment nor is there any sufficient reason to warrant the review sought.

12. Accordingly, I find the application to be without merit and is therefore dismissed. Since the respondent did not participate in these proceedings, I will make no order as to costs.

SIGNED at Nairobi.

A. MABEYA, FCI Arb

JUDGE

DATED and DELIVERED at Meru this 10th day of December, 2020.

JUDGE