



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 520 OF 2014

AMIRAN (K) LIMITED.....PLAINTIFF

-VERSUS-

MISHALE FREIGHTER LIMITED.....DEFENDANT

RULING

1. On **29th November 2018** the court pronounced its judgment on the plaintiff's claim herein. The plaintiff sought by its plaint for judgment for Ksh 14,158,428, for general damages, costs and interest. By this court's judgment of 29th November 2018 judgment was entered for the plaintiff against the defendant for Ksh 14,158,428 and costs.

2. The plaintiff now more than 3 months later has filed an application seeking to review that judgment. Review is sought under **Order 45 Rule 1 of the Civil Procedure Rules** which provides:

“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 of 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 the judgment to the Court which passed the decree or made the order without unreasonable delay.”

3. That Rule requires a review be sought without unreasonable delay. In this case the plaintiff waited for 3 months to file its application. No explanation at all, was given why the application was not filed sooner. The judgment having delivered end of November 2018 in all probability the defendant reorganized its affairs to meet the judgment amount. It is unjust in my view to sit back and more than 3 months later seek to review the judgment which review may lead to the defendant being shouldered with a higher amount to pay.

4. In seeking to review the judgment the plaintiff stated that it had pleaded in the plaint for general damages and interest which were not awarded in the judgment.

5. The plaintiff has, in seeking the review, faulted the finding of the court. It does not allege that there was a mistake or an error apparent on the fact of the judgment. If indeed what the plaintiff relies on is that the court was at fault the plaintiff then should have filed an appeal against the judgment. This is what was stated by the court of appeal in the case **PANCRASST SWAI –V- KENYA BREWERIES LIMITED (2014) eKLR** viz:

*“It seems clear to us that the appellant, in basing his review application on the failure by the Court to apply the law correctly faulted the decision on a point of law. That was a good ground for appeal but not a ground for an application for review. If parties were allowed to seek review of decisions on grounds that the decisions are erroneous in law, either because a Judge has failed to apply the law correctly or at all, a dangerous precedent would be set in which court decisions that ought to be examined on appeal would be exposed to attacks in the courts in which they were made under the guise of review when such courts are *factus officio* and have no appellate jurisdiction.”*

6. The plaintiff's grounds for seeking review may be good grounds in an appeal but not a review. See the case **ABASI BELINDA V FREDERICK KANGWAMU & ANOTHER** thus:

“a point which may be a good ground of appeal may not be a good ground for an application for review and an erroneous view of evidence or of law is not a ground for review though it may be a good ground for appeal”

7. Having considered the application and the affidavit evidence, and in review of what is stated above the Notice of Motion dated 10th January 2019, although filed on 15th March 2019 is hereby dismissed with costs to the defendant.

8. Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 6th day of November, 2019.

MARY KASANGO

JUDGE

Judgment read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant

MARY KASANGO

JUDGE