



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 6463 OF 1990

H.W. GICHOHI.....PLAINTIFF/APPLICANT

-VERSUS-

J. MUCHEMI WANYEKI.....DEFENDANT/RESPONDENT

RULING

1. The plaintiff/applicant took out the Notice of Motion dated 20th February, 2019 in which he applied for inter alia that this Honourable Court be pleased to review and set aside its ruling delivered on 14th December, 2018 dismissing the plaintiff's/ applicant's Notice of Motion dated 23rd October, 2015.

The applicant filed an affidavit he swore in support of the motion.

2. The defendant/respondent filed Grounds of Opposition dated 11th March, 2019 to oppose the Motion.

3. Subsequently, the parties consented to disposing of the Motion through written submissions.

4. The applicant submitted that he should not be made to suffer on the premise of the missing file, since this was not the result of any mistake either on his part or on the part of his advocate. In so arguing, he relied on the Court of Appeal's holding in **Belinda Murai & 9 others v Amos Wainaina [1979] eKLR** that the courts should strive to promote the interest of justice as much as possible even in instances of a mistake made by a person. The applicant therefore urged this court to exercise its discretion in his favour by its reviewing decision and consequently reinstating the suit.

5. The respondent opposed the Motion arguing that it is a replica of the application dated 23rd October, 2015 which was heard and dismissed by this court through its order which the applicant is now seeking to review.

6. The respondent further contended that the applicant has failed to satisfy the necessary conditions to warrant a review of this court's ruling and cited the case of **Labanson Maina Mutugi v Peter Mutahi George [2018] eKLR** where the court stated *inter alia*, that an erroneous view taken by a court does not constitute a ground for review.

7. I have considered the grounds set out on the face of the Motion, and the facts deponed in the supporting affidavit and the Grounds of Opposition plus the rival submissions together with the cited authorities.

8. The applicable principles to guide this court in deciding whether or not to review its earlier order are stated in **Order 45 of the Civil Procedure Rules, 2010** inter alia as follows:

- a. the discovery of new and important matter or evidence, or**
- b. some mistake or error apparent on the face of the record, or**
- c. any other sufficient reason.**

9. The basis of the applicant's Motion is that this court in dismissing his application dated 23rd October, 2015 overlooked the fact that the delay in prosecuting his suit was as a consequence of the missing court file and that there was no correspondence to show that he was served with the notice to show cause prior to the dismissal of his suit.

10. I have perused this court's ruling delivered on 14th December, 2018 and find that the above issues were equally raised before this court through the applicant's earlier application dated 23rd October, 2015 and that this court took into account those arguments and came to the conclusion that the court file was readily available and not missing as alluded.

11. For the above reason, therefore, I take the view that the applicant has fallen short of demonstrating that his current application has satisfied any of the conditions set out hereinabove necessary to persuade me to review this court's ruling.

12. The upshot is that the Motion lacks merit. It is dismissed with costs to the respondent.

Dated, Signed and Delivered at Nairobi this 1st day of November, 2019.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent