REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 256 OF 1990

IN THE MATTER OF THE ESTATE OF

DANIEL MUNTET NAIMODU.........................(DECEASED)

MIKE PARMALEAU PAINGONI.......................APPLICANT

VERSUS

MONICAH WANJIKU.....................................RESPONDENT

RULING

1. The application before Court is the one dated 29/4/2017. The Applicant seeks orders;

   1. Spent

   2. Spent

   3. Spent

   4. THAT the Honourable Court be pleased to review and set aside the ruling and any other consequential orders thereto.

   5. THAT the Honourable court be pleased to order the exhumation of the remains of both Isabel Nyokabi Muntet (deceased) and Daniel Muntet Naimodu (deceased) and the taking of DNA samples from all the parties involved and those that have an interest in the matter for purposes of identification of the true scientific connection with the deceased.

   6. THAT this Honourable court be pleased to annul the grant issued to the Respondent in respect of the Estate of the deceased and set aside any consequential orders issued and connected thereto while also declaring the whole process a nullity for want of jurisdiction.

   7. THAT the costs of this application be provided for.

   8. pedient and necessary in the circumstances.

2. The application is premised on 12 grounds listed (a) to (l) on the face of the application and supported by the affidavit of Mike Parmaleau Paingoni (the Applicant).

3. The gist of the application as gleaned from the grounds and the supporting affidavit is that an earlier application for revocation of grant was by a ruling of this Court decided majorly on technicalities. To quote from paragraph (d) of the grounds;

> **"That eventually the matter came up for ruling where the matter was decided majorly on technicalities that surrounded issues of inconsistencies of the names of the deceased (which cannot be faulted against anybody), the mode of canvassing the application and the unreasonable shouldering of the burden of proof which upon the evidence provided would suggest that which is akin to the standards of proof being that of beyond reasonable doubt."**

4. It is urged that there is discovery by the Applicant of new documentary evidence that relates to correspondence with his deceased father, efforts to protect the property and on questions of the true status of the Respondent which includes the factual deponing of the area chief as to

what transpired.

5. The Court is invited to take judicial notice of the poor infrastructure at the time the cause was lodged in Court especially affecting the Applicant who is from far flung areas of Narok.

6. It is the Applicant's case that the land under reference was by virtue of **Section 32** of the **Law of Succession Act** excluded from the provisions of that Act. The Court thus acted out of jurisdiction as the substratum herein had already been dealt with under customary law.

7. The Applicant annexes to his affidavit his birth certificate ('MPP1a') and copies of correspondences between the deceased and other beneficiaries ('MPP1b'). The birth certificate indicates his date of birth as 2/5/1949. The father is listed as Daniel Muntet Naimado and the certificate is issued on 24/3/2017. 'MPP1b' is a bundle of three letters. All the 3 letters are photocopies which are largely illegible but one can discern therefrom a purported signature of Daniel Naimado in the 1st two letters. The 3rd is the faintest and I am unable to decipher much from it. There is also a letter from the District Commissioner Narok inviting one Hosea Simel to a meeting. Hosea is asked to tag along Priscilla Wambui, Mike Paiyoni and Sila Kishoyani.

8. It is the Applicant's case that after the death of the deceased a meeting of the family was held presided over by chiefs of Kimiti Ole Shunkur *(sic)* to deliberate on the sharing out of the land according to accepted customs. 'MPP4' is annexed as evidence of that meeting. That document indicates how land parcels Narok/CIS-Mara/Ololulunga 151 and Plot Ololulunga Township No. 70 were to be shared out. Parcel 108 was to be divided into 4 equal parts and one Moses Nkaru was to be included in the share of Daniel Muntet. Muntet's share was to be apportioned among his three (3) wives. Daniel Muntet's share in parcel No. 151 and Plot No. 70 was to be shared among his three (3) wives.

9. That purported agreement is signed by three (3) named chiefs being Kimiti Ole Shunkur, Joel Ole Ntoika and Joseph S. Kaiseiye. It is signed by one Simel Ole Naimodu, Mike Parmaleau Paingoni, Priscilla Muntet, Isabella Nyokabi Muntet, Moses Nkaru and Rera Kuluo.

10. Reliance is further placed on a letter by Chief Partoip Ole Nchuko (annexture MPP3a) in which he gives details of the deceased's family as;

- Deceased had 2 widows viz Pricilla Muntet (deceased) and Isabella Nyokabi (deceased).

- Priscilla had 3 sons, 2 are deceased leaving the Applicant as the surviving son.

- Isabella Nyokabi was childless.

- Deceased owned land title No. Mara/Ololulunga/151 jointly with Karanja Ole Nkaru.

- Monica Wanjiku is a daughter to Isabella Nyokabi's sister.

11. Partoip Ole Nchoko has sworn an affidavit detailing the information at paragraph 10 above.

12. It is further urged that personal sureties to the Petitioner benefited from the estate, and annextures “MPP8a” and “MPP8b” are annexed. The said sureties were Wangendo Gichora Muigai and Paul Muigai Wakabu. I note from “MPP8b” that one Paul Muigai got a share of the estate from Parcel 108 and parcel 151.

13. The Applicant avers that he has been proactive in protecting the estate herein from waste and he exhibits a caution lodged in respect of parcel No. CIS Mara/Ololulunga/209 by himself on the 11/3/2016 and another caution in respect of CIS Mara/Ololulunga/70. In addition he has annexed various correspondence emanating from the local administration regarding this matter.

14. It is further urged that it was not until 2016 when the Applicant and others came to learn that they had been excluded from the affairs of the estate and he had lodged an application for revocation of grant dated 5/7/2016. This application was dismissed. There is now discovery of new evidence.

15. The status of the Respondent is said to be unclear as she is accused of variously referring to herself as a wife to the deceased and in other instance as a daughter of the deceased. The court is referred to her affidavit sworn on the 10/8/2016 marked “MPP 14”. A perusal of the affidavit does not seem to vindicate this allegation.

16. There is however an affidavit by the Respondent sworn on 19/1/2016 in which at paragraph 2 thereof, the Respondent refers to herself as the wife of the deceased.

17. A certificate of marriage is marked “MPP15” is challenged on grounds that Isabella Nyokabi is shown as having been married when she was below the age of majority and the entire union is thus void in law.

18. It is sought that an exhumation order be issued in respect of the remains of the deceased and samples of all beneficiaries and interested parties be matched with that of the deceased to confirm the true beneficiaries.

19. The application is opposed and Monicah Wanjiku (the Respondent) has filed a replying affidavit sworn on the 12/7/2017.

20. She avers that the Applicant is not a beneficiary of the estate of Daniel Muntet Naimodu as alleged and the Applicant was not known to

the Respondent and her siblings by the time the deceased died on 23/5/84.

21. The deceased was married to Isabel Nyokabi Muntet also known as Ithefero Nyokabi whom he had married on 23/3/1935. A marriage certificate is annexed. Upon the death of the deceased, Isabel took out letters of administration on 14/3/1990. A grant was issued on 5/3/1992 and confirmed on 9/10/1992. The Respondent was substituted as the Administrator on 25/7/2015 upon the demise of her mother, Isabel.

22. It is urged that upon the dismissal of the earlier application for revocation of grant, the Applicant went to create and obtain documents to justify his claims in the estate of the deceased. It is noted that he only obtained a birth certificate on 24/3/2017 yet he was born on 21/5/1949. The Applicant is also accused of proceeding on a mission to create a certificate of death of the deceased and gone ahead to obtain letters from the local administrators to justify the application before the court by introducing persons who are not related to the deceased into the estate.

23. The DNA sought is seen as a desperate attempt and which would be a very unfortunate situation as the immediate family of the deceased i.e. the Respondent and her brother Paul Muigai are clearly to be traumatized as a result of such actions of disturbing the dead in their graves.

24. On the 19/7/2017, directions were taken that the application be dispossed off by way of written submissions. I note Ms Kiplenge & Kurgat for the Applicant and Ms Khaminwa & Khaminwa Advocates for the Respondent have filed written submissions.

25. I have painstakingly considered the application, the supporting affidavit and the numerous annextures to it. I have considered the replying affidavit. I have had regard to the learned submission of counsel and considered all issues raised therein including those that I may not necessarily rehash in this ruling.

26. By the very nature of the application, it has been of utmost necessity to consider the ruling of this court dated 15th February, 2017 which is the ruling impugned by the present application and whose review is sought.

27 The application is premised on **Section 80, 63(e)** and **3A** of the **Civil Procedure Act** and under **Order XLV Rule 1** of the **Civil Procedure Rules** (I suppose the **XLV** should read **Order 45**). It is essentially therefore an application for review of the Court's ruling/orders of 15/2/2017.

28. In my considered view, the issue for determination is only one; whether the Applicant has satisfied the grounds for review.

29. At the outset, it is important to distinguish grounds of appeal and grounds for review. In the case of **NATIONAL BANK LIMITED Vs. NDUNG'U NJAU [1996] KLR (CAK)** the Court held;

> **"In my discernment, an order cannot be reviewed because it is shown that the Judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of co-ordinate jurisdiction or even the judge whose order is sought to be reviewed have subsequently arrived at different decision on the same issue. In my opinion the proper way to correct a judge's alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose."**

30. The issue is illuminated further by ***Bennet J*** in **ANASI BELINDA Vs. FREDRICK KAGWAMU & ANOTHER [1963] EA 557**, when he held that;

> **"A point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal."**

31. So, what are the powers for review bestowed on the High Court? It is important to examine these powers at this jucture inorder to apply them in resolving the application before Court. Those powers are to be found under **Section 80** of the **Civil Procedure Act** and **Order 45** of the **Civil Procedure Rules.**

32. Section 80 of the **Civil Procedure Act** Provides;

> **"S. 80 Any person who considers himself aggrieved-**
>
> **(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or**
>
> **(b) by a decree or order from which no appeal is allowed by this Act,**
>
> **May apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."**

33. **Order 45** of the **Civil Procedure Act** provides;

> **"Order 45 Rule 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 review of judgment to the court which passed the decree or made the order without unreasonable delay."

34. As held in **STEPHEN GITHUA KIMANI Vs. NANCY WANJIRA T/A PROVIDENCE AUCTIONEERS [2016] eKLR, Section 80** gives the power of review and **Order 45** sets out the rules. The rules in my view restrict the grounds for review. The above rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or' (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a **requirement that the application has to be made without un reasonable delay.**

35. In our instant suit, what are the grounds raised in support of the application for review? The reasons relied on are to be found in the grounds in support of the application which I reproduce herebelow;

a) **THAT** the grant was obtained fraudulently by making false statements and concealing crucial material facts from the court through provision of piecemeal information relating to the beneficiaries and further the employment of theagreed mode of devolution of property formula as per the agreement (consensus) and Maasai Customary Law.

b) **THAT** further in the view of the above and having come to know the covert filing of succession proceedings and issuance and confirmation of grant to the Respondent, the Applicant moved the court appropriately seeking for orders of revocation grant issued to the respondent herein.

c) **THAT** consequently thereof the matter was canvassed in court where crucial information as to the deliberate exclusion and omission of the Applicant and other beneficiaries from the succession process was tendered this is despite all parties having attended either by themselves or through their appointed agents in the various meetings that were held since the demise of the deceased.

d) **THAT** eventually the matter came up for ruling where the matter was decided majorly on technicalities that surrounded issues of inconsistencies of the names of the deceased (which cannot be faulted against anybody), the mode of canvassing the application and the unreasonable shouldering of the burden of proof which upon the evidence provided would suggest that which is akin to the standards of proof being that of beyond reasonable doubt.

e) **THAT** since the delivery of the ruling the Applicant having had an opportunity to study the contents of the ruling and upon various consultations with many of the parties affected and involved has now discovered new documentary evidence that relates to the following: His connection with the deceased ably captured in the various correspondences with his deceased father, their efforts all along to protect and preserve their deceased father's property in order to avoid the disenfranchisement by the Respondent as well as other forms of intrusions to the property, questions of the true status of the respondent herein as amongst other reasons, the factual deponing of the area chief as to what transpired among other reason.

f) **THAT** further in view of the above the court ought to take judicial notice that at the time the Letters of Administration intestate were being petitioned for there was absolutely poor communication infrastructure and if at all there were the same was poorly developed especially in far flung areas of Narok County as such therefore it cannot be said that the Applicant's delay is inexcusable.

g) **THAT** further the covert process pursued in court by the respondent predecessors was essentially inconsistent with the provisions of written laws of the land especially so Section 32 of the Law of Succession Act that excludes properties located in Narok County from being subject to the provisions of the Act.

h) **THAT** consequently thereof, the court adjudicated outside its jurisdiction owing to the fact that the substratum had already been dealt with through the customary law and consensus and as such, the orders that were issued as to the devolution of the deceased's properties were in itself misguided, irregular, uncalled for and without the backing of the law.

i) **THAT** the matter having been dealt with according to customary law and further through the consensus evidenced in the agreement entered into and further in view of Section 32 of the Law of Succession Act it is in the interest of justice that both the grant of letters of administration issued to MONICAH WANJIKU and subsequently confirmed be annulled and the entire process be declared a nullity to pave way for devolution of the deceased's estate as per the customary law and what was agreed there earlier.

j) **THAT** therefore its only fair and just and in the interest of protection the reputation of this Honourable Court that the proceedings pursued n court in contravention with the said section of the law of succession act be declared null and void for its want of consistency.

k) **THAT** there has been no unreasonable delay in making of this application.

l) **THAT** it is in the interest of justice that this application be wholly allowed.

36. Looking at grounds (a), (b), (c), (d), (g), (h) and (i), none has anything to do with review powers of the Court. The grounds fault the

finding of the Court for;

(i) Deciding the matter on technicalities relating to inconsistencies in names, the mode of hearing of the application and the unreasonable shouldering of the burden of proof on the Applicant.

(ii) Misapprehending the law in that the property in question was by virtue of **Section 32** of the **Law of Succession Act** exempted from the application of the said Act.

(iii) Lack of the Court's jurisdiction as matter had been adjudicated on through customary law.

Clearly, the Applicant is aggrieved because the case according to him was decided on technicalities, the mode of canvassing of the application and the alleged unreasonable shouldering of the burden of proof on the Applicant, the misapplication of the **Law of Succession Act** (specifically **Section 32**) and lack of jurisdiction.

37. As held in <u>**MWIHIKO HOUSING COMPANY LTD -VS- EQUITY BUILDING SOCIETY**</u> **[2007] 2 KLR 171**;

> "**A review could have been granted whenever the court considered that it was necessary to correct an error or omission on its part. The error or omission must have been self-evident and should not have required an elaborate argument to be established. It would neither have been sufficient ground of review that another court could have taken a different view of the matter nor could it have been a ground that the court proceeded** ***on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or another provision of law could not have been a ground for review."***

38. Similarly the Court of Appeal in <u>**NATIONAL BANK OF KENYA LTD -VS- NDUNG'U NJAU**</u> **(Supra)** the court stated;

> **" … Misconstruing a statute or other provision of law cannot be a ground for review" … "The Learned Judge made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the Learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it."**

39. And finally on that point the decision of the ***Court of Appeal*** in <u>**PANCRAS T. SWAI -VS- KENYA BREWERIES LIMITED**</u> **[2014] eKLR** is spot on. The court stated;

> **"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 <u>functus officio</u> and have no appellate jurisdiction. The power to review the decisions on appeal is vested in appellate courts. Order 44 Rule 1 (now Order 45 Rule 1 of the Civil Procedure Rules 2010) gave the trial court discretionary power to allow review on the three limbs therein stated or "<u>for any sufficient reason</u>".**

40. I would have no hesitation whatsoever in making the inevitable finding that in so far as grounds (a), (b), (c), (d), (g), (h) and (i) of the application are concerned, that is a matter for an appellate court and not for a review.

41. This leaves ground (e) as the mainstay of the application. I reproduce the same here;

> **"e) THAT since the delivery of the ruling the Applicant having had an opportunity to study the contents of the ruling and upon various consultations with many of the parties affected and involved has now discovered new documentary evidence that relates to the following: His connection with the deceased ably captured in the various correspondences with his deceased father, their efforts all along to protect and preserve their deceased father's property in order to avoid the disenfranchisement by the Respondent as well as other forms of intrusions to the property, questions of the true status of the respondent herein as amongst other reasons, the factual deponing of the area chief as to what transpired among other reason."**

42. To restate the law, the grounds for review include **the discovery of new and important matter or evidence, which, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time the decree was passed or the order made.**

43. The principle is succinctly expounded by the court of appeal in <u>**ROSA KAIZA -VS- ANGELO MPANJU KAIZA**</u> **(2009) eKLR,** where the court quoting from a commentary by ***Mulla*** on Similar provision of the **Indian Civil Procedure Code 15th Edition** at **page 2726** stated;

> **"Application on this ground must be treated with great caution and as required by Rule 4 (2) (b) the court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that existence of the evidence was not within his knowledge,; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the**

knowledge of the party when the decree was made."

44. In my view, a review application cannot be an avenue to seek a rehearing of a mater. There would arise untold chaos and anarchy in judicial proceedings if parties were allowed to litigate before a Court of law and after a decision is made, proceed to gather alternative evidence and approach the Court once again to rehear a matter. A party cannot possibly be allowed to litigate piecemeal.

45. The only evidence envisaged under **Section 80** of the **Civil Procedure Act** and **Order 45** of the **Civil Procedure Rules** is that which after due diligence was not within the knowledge of the Applicant or could not be produced by him at the time the decree was passed or the order made.

46. Evidence that was within the knowledge of a party and which he could have placed before the Court during hearing but failed so to do cannot be entertained under a review application as this would be tantamount to a fresh trial. In such a scenario, it would be possible to have a trial proceed *ad infinitum* since then it would also be open to the opposite party to seek a similar indulgence. The result would be a clear abuse of the Court process.

47. Take for instance the birth certificate that the Applicant exhibits. The same is issued on 24/3/2017. This is over one (1) month from the date of the impugned ruling of 15/2/2017. There is nothing about this document that was not within the knowledge of the Applicant and no explanation is given why the Applicant did not adequately prepare all his evidence to be able to produce it during the hearing including this document and all the other documents. Does this document fall in the description of discovery of new and important matter or evidence? Certainly not. This applies to all the other documents annexed.

48. In **FRANCIS ORIGO AND ANOTHER Vs. JACOB KUMALI MUNGALA** **(Civil Appeal No. 149 of 2001)** arising from a decision of the High Court dismissing an application for review because the Applicants did not show that they had made discovery of new and important matter or evidence as the witness they intended to call was all along known to them, the ***Court of Appeal*** stated;

> **"our parting shot is that an erroneous conclusion of law or evidence is not a ground for a review but may be a good ground for appeal. Once the appellants took the option or review rather than appeal they were proceeding in the wrong direction. They have now come to a dead end. As for this appeal, we are satisfied that the learned Commissioner was right when he found that there was absolutely no basis for the appellant's application for review. We have therefore no option but to dismiss this appeal with costs to the respondent."**

49. As held by the ***Supreme Court of India*** in the case of **AJIR KUMAR RATH Vs. STATE OF ORISA & OTHERS, 9 Supreme Court Cases 596** at **page 608;**

> **"the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."**

50. Looking at all the documents now sought to be introduced by the applicant, it is manifestly clear that what the Applicant seeks *is a fresh hearing or arguments or the correction of an erroneous view taken earlier by the Court.* He has not demonstrated that any of the pieces of evidence he alludes to was a discovery of a 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 the order was made.

51. I wish to buttress this finding by making reference to the decision of the ***Court of Appeal*** in **TOKESI MAMBILI & OTHERS Vs. SIMION LITSANGA [2000] LLR 8340** where ***Kwach, Lakha and O'kubasu JJA*** held as follows;

> **"i. 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..."**

52. It is not difficult to see the rationale behind such restriction of evidence. To my mind, it is obvious that anything else to the contrary would be untenable. It would be tantamount to opening a pandoras box which as stated earlier would visit untold chaos and anarchy in litigation.

53. If every time a party loses in a decision of Court he is allowed to go gather more evidence and return, there would be no end to litigation. Again, the temptation to manufacture evidence would be real. It is for good measure therefore that a party approaching the Court must gather all arsenal by way of evidence using all diligence to gather all necessary evidence before trial and to present the same to Court. Only where, after exercise of due diligence, a piece of evidence is not within the knowledge of a litigant or could not be produced by him, can the Court allow a review on that ground. A distinction must be clearly drawn between discovery of new evidence and gathering of available evidence.

54. The other ingredient I am enjoined to consider is whether sufficient reason is given to warrant review of the Court orders.

55. The ***Court of Appeal of Tanzania*** in the case of the **REGISTERED TRUSTEES OF THE ARCHDIOCESE OF DAR ES SALAAM**

Vs. THE CHAIRMAN BUNJU VILLAGE GOVERNMENT AND OTHERS, CIVIL APPEAL NO. 147 OF 2006 had this to say on the subject;

> **"It is difficult to attempt to define the meaning of the words 'sufficient cause'. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no *negligence, or inaction or want of bona fides,* is imputed to the appellant" (Emphasis added)."**

56. In our instant suit no sufficient reason is canvassed why a review would be merited. On the facts of the case, one can safely impute inaction on the part of the applicant, sentiments which this Court expressed in the impugned ruling.

57. As held in the case of **SADAR MOHAMED Vs. CHARAN SIGN AND ANOTHER (1963) EA 557**, any other sufficient reason for the purpose of review refers to grounds analogous to the other two (for example error on the face of the record or discovery of new matter). I find no sufficient reason advanced to warrant review of the Court's orders.

58. Lastly, it is clear, and it has not been canvassed to the contrary, that there is no error apparent on the face of the record.

59. From the foregoing, I reach the conclusion that the application herein is one for failure. This is not a proper case, based on reasons advanced, for the exercise of the Courts powers for review. The Applicant has not satisfied the grounds for review. Accordingly the application dated 27/4/2017 is dismissed with costs to the Respondent.

Dated and Signed at Nakuru this 20th day of July, 2018.

A. K. NDUNG'U

JUDGE