



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**MISC.CIVIL APPLICATION NO. 17 OF 2015**

**FRANCIS JAMES NDEGWA.....APPLICANT**

**VERSUS**

**2NK SACCO LTD.....RESPONDENT**

**RULING**

1. The application is premised under no specific provisions of the law; but in essence the Applicant who was acting in person seeks an order for the review of the Order of this Honourable Court made on the 15<sup>th</sup> November, 2016;
2. The application is supported by grounds on the face of the application and on the Supporting Affidavit made by Francis James Ndegwa which is dated the 13<sup>th</sup> February, 2017 wherein he depones to the fact that he is the applicant therein and is competent to make the Supporting Affidavit.
3. A short preview of the facts herein; the applicant was on the 10/03/2016 granted an order by this court for the enlargement of time in which to file his appeal; the applicant was granted 30 days to file the appeal but 142 days down the line he failed to do so and again approached the court for a further extension which was declined the 15/11/2016;
4. An order for the review is now being sought of the order made by this Honourable Court on the 15/11/2016 dismissing his application for a further extension;

**ISSUES FOR DETERMINATION**

5. After taking into consideration the presentations of both parties this court finds the following only one issue for determination;  
(i) Whether to review or set aside the order of 15/11/2016.

**ANALYSIS**

6. The principles for review of an order or decree of the court are; that there must be discovery of new and important material or evidence, which, after the exercise of due diligence, was not within the knowledge or could not be obtained and produced at the time the order was made; or that there must be a mistake or error apparent on the face of the record; or for any other sufficient reason.
7. After hearing submissions of the applicant and Counsel for the Respondent Mr.Nderi, it is noted that there is no contention of discovery of new and important material or evidence, which, after the exercise of due diligence, was not within the Applicant's knowledge or could not be produced at the time the order was made; there is also no contention of any mistake or error apparent on the face of the record;
8. The reasons advanced by the applicant are the same ones alluded to when the applicant was granted leave to file his appeal out of time and failed to adhere to the timelines given; which therefore means that the applicant has tendered no new material or evidence nor is there any contention of mistake or error on the face of the record; this court finds that the application does not qualify for the orders sought of review.
9. It is also this court's considered view that the application before the court has been brought under the guise of review and notes that the issues therein have already been adjudicated upon on merit on two separate occasions and a conclusive decision rendered on both occasions;
10. The application is found to be '*res-judicata*' which essentially means that the applicant is re-litigating a similar matter that is as between the same parties which matter has been conclusively determined and decision rendered by a competent court; this court reiterates that the

application does not qualify for the order for review.

**FINDINGS AND DETERMINATION**

11. This court finds that the applicant has not satisfied the salient requirements for an order for review to enable this court grant the order sought.

12. The application is hereby dismissed with costs to the respondent.

It is so Ordered.

**Dated, Signed and Delivered at Nyeri this 13<sup>th</sup> day of July, 2017.**

**HON.A. MSHILA**

**JUDGE**