

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO.184 OF 2011

SAMUEL OGODO WAGAAPPLICANT

VERSUS

FISH PROCESSORS [2000] LIMITED.....RESPONDENT

**[Being an appeal from the ruling of R. B. N MALOBA – R.M. from the Chief Magistrate's Court at
Kisumu**

in CMCC No.257 of 2011.]

R U L I N G

The applicant has appealed to the Court of Appeal against the decision of this court which on 31/10/12 dismissed with costs his application under Order 45 of the Civil Procedure Rules for the review of the judgment dated 26/7/12. What is being appealed against is a negative order. Further, it is now trite that where what is sought to be stayed is the order for costs, the same cannot be granted as the appellant, if he succeeds in the appeal, would be refunded his costs. **(FRANCIS KABAA .V. NANCY WAMBUI & ANOTHER, Civil Application No. NAI 298 OF 1996)**. The application is misconceived and is dismissed with costs.

Dated, signed and delivered this 13th March, 2014

A. O. MUCHELULE

J U D G E