



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**MISC.APPL. NO. 369 OF 2013**

**BETWEEN**

**REPUBLIC..... APPLICANT**

**AND**

**KENYA BUREAU OF STANDARDS ..... 1<sup>ST</sup> RESPONDENT**

**THE KENYA REVENUE AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

***EXPARTE***

**PETER MBWIRI IKAMATI**

**RULING**

1. The Notice of Motion dated 1<sup>st</sup> April 2014 seeks inter alia, that the Honourable Court be pleased to review and or set aside the decree and judgment of the Court dated 17<sup>th</sup> March 2014. It is supported by the affidavit of Peter Mbwiri Ikamati.
2. In the judgment dated 4<sup>th</sup> March 2014, I dismissed the application dated 17<sup>th</sup> March 2014 on the ground that the applicant's motor vehicle did not fall or conform to the applicable Standard **KS 1515:2000** as it was being imported more than 8 years from the date of manufacture and that Kenya Bureau of Standards was right to reject the ex-parte applicant's application for a waiver to import an over age vehicle. I found as a fact that the applicant did not provide for the date of manufacture but the year thereof.
3. The applicant now moves the Court on the ground that he has discovered a Certificate of Permanent Export which shows the date of manufacture of the vehicle and that therefore the court should reverse its decision on that basis.
4. The application is opposed by the respondents on the ground that it does not fall within the

provisions for review.

5. Under **Order 45 rule 1 and 12 of the Civil Procedure Rules** which provides as follows;

*(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 a review of judgment to the court which passed the decree or made the order without unreasonable delay.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.*

6. I have read the applicant's supporting affidavit and the applicant has not shown that the Certificate of Permanent Export was not in his possession or available at the time he filed the suit despite exercising due diligence. Counsel for the applicant in his submissions stated that it is only when the new advocates took over the conduct of the matter that they discovered the Certificate of Permanent Export. **Order 45(1)** is clear that the discovery of new important evidence is subject to exercise of due diligence. The Certificate of Permanent Export is one of the documents that would have been available to the applicant and which was necessary to prove his case.

7. In the circumstances, I am unable to exercise my discretion in the applicants favour and consequently the motion is dismissed with costs.

**DATED and DELIVERED at NAIROBI this 5<sup>th</sup> day of May 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Nyanyuki instructed by Mose Nyambega and Company Advocates for the ex-parte applicant.

Mr Ndolo instructed by Igeria and Ngugi Advocates for the 1<sup>st</sup> respondent.

Mr Chabala, Advocate instructed by the 2<sup>nd</sup> respondent.

Ms Mwangi, Litigation Counsel, instructed by the State Law Office for the 3<sup>rd</sup> respondent.