



REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Civil Application 70 of 2011

IN THE MATTER OF AN APPLICATION FOR LEAVE BY PRIDGEON BARASA MASAKE FOR

JUDICIAL REVIEW ORDERS OF CERTIORARI AND MANDAMUS,

AND

IN THE MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA

AND

IN THE MATTER OF THE DECISION BY NZOIA OUTGROWERS CO. LTD

BETWEEN

REPUBLIC.....APPLICANT

versus

THE NZOIA OUTGROWERS CO. LTD.....RESPONDENT

EX-PARTEPRIDGEON BARASA MASAKE

RULING

The Application

[1] The Applicant applied by way of Notice of Motion dated 4/5/2012 for a review of the ruling of the court made on 9/6/2011.

[2] The major ground for review is that there was an error/mistake on the face of the record.

Error on face of record

[3] When a party alleges an error on the face of the record as the basis for review of an order of the court, it must be shown that the error is so obvious that it needs not much probing to discern. The person looking at the record should be able to say with ease that the court could not have intended to arrive at the decision represented by the error: it was simply an error. See BGM HC PET No.7 of 2012 [2012] eKLR where the court said that:

Therefore, it must be an error or mistake that is indisputable and makes the decision being re-

examined to be unquestionably erroneous. The reviewing court should be able to discern such error easily.

I am guided by the wise words of the Court of Appeal in this case of **National Bank of Kenya v. Ndung'u Njau Civil Appeal No.211 of 1996** that:

A review will be granted whenever the court considers it is necessary to correct an error or omission on the part of the court. The error or omission must be self evidence and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.

[4] There is however, no such obvious error in this case. The errors alleged in the affidavit in support of the application for review, and the submissions by the Applicant, cannot pass for obvious errors for purposes of review. Those are substantive issues that would need full scale hearing in an appeal if the court is to discern the true position of the law on them. Just consider for a moment, the following issues being raised by the Applicant:

I) *That Nzoia Outgrowers Ltd is a public body and not a Private Company, and*

II) *That the High Court has unlimited original jurisdiction to hear a matter where an alternative procedure to resolve disputes is provided by an Act of Parliament.*

[5]. Are these not disputed matters which can only be determined by a court in an appeal on hearing full scale arguments from the parties and applying the relevant law? Are these matters which can be classified as obvious errors within the province of Order 45 of the Civil Procedure Rules? Whilst I am not attempting to lay a hard distinction between grounds of review, and of appeal, looking at the issues at hand, it is crystal clear that they are of the nature that cannot be housed under the regime of review under Order 45. This is a case that readily presents itself for the process of appeal, rather than review. I am convinced I cannot probe the substance of the findings of this court in its ruling made on 9/6/2011 without sitting on appeal of those orders of this court. That would be absurd. Equally, I should also say here and now that there is nothing on record that would impel the court to set aside its own orders *ex debito justitiae*. Nothing is irregular. Nothing is illegal. Nothing is there to review. There is no error on the face of the record.

[5] For those reasons, I dismiss the application dated 4/5/2012 with costs to the Respondent.

Dated, signed and delivered in open court at Bungoma this 7th day of May, 2013

F. GIKONYO
JUDGE

In the presence of:

Court Assistant: Khisa

Kraido for the Applicant

Onchiri for Respondent

F. GIKONYO
JUDGE