



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO. 86 OF 2013**

**PATRICK KHADONDI.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**JAPHET NOTI CHARO.....DEFENDANT/RESPONDENT**

**R U L I N G**

**Introduction:**

1. On 21<sup>st</sup> November 2014, I dismissed the Application by the Plaintiff in which he was seeking to have the Defendant committed to jail for contempt of a court order.
2. The Plaintiff has filed an Application dated 29<sup>th</sup> January, 2015 in which he is seeking to review and set aside my orders of 21<sup>st</sup> November 2014.
3. The Application is premised on the grounds that the court inadvertently omitted to consider the pleadings and particularly the Replying Affidavit by the Defendant in which he admitted committing the contemptuous acts on account of having not been served with the order of 29<sup>th</sup> May 2013.
4. In his Replying Affidavit, the Defendant has deponed that the issues raised on the current Application can only be dealt with on appeal and not on an Application for review.
5. The Application by the Applicant is premised on the ground that this court did not consider the Defendant's Replying Affidavit when it delivered the Ruling of 21<sup>st</sup> November 2014.
6. Where a party alleges that the trial court failed to consider the evidence and pleadings while arriving at its decision, the dissatisfied party can only file an appeal and not file an application for review. The failure by the court to consider the pleadings on record, unless the court inadvertently did not see those pleadings at all, cannot be said to be " a sufficient reason" to entertain an application for review.
7. Indeed, in my Ruling of 21<sup>st</sup> November, 2014, I considered the Affidavit that was filed by the Defendant. Although this court found as a fact that the Defendant was served with the orders of the court, it was my considered opinion that a party alleging that there has been contempt of court must prove that allegation to the required standards. It does not matter that the Respondent has not specifically rebutted that allegation. Considering that contempt proceedings are criminal in nature the burden of proving that the opposite party is in breach is paramount. That is what the Plaintiff failed to do.
8. Consequently, I disallow the Plaintiff's Application dated 29<sup>th</sup> January. 2015 with costs.

**Dated and delivered in Malindi this 12<sup>th</sup> day of June, 2015.**

**O. A. Angote**

**Judge**