



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC. NO. 454 OF 2002**

**SELINA WEKESA ..... PLAINTIFF**

**- VERSUS -**

**GEORGE ELLAM WEKESA ..... DEFENDANT**

**RULING**

[1] The applicant filed the notice of motion dated 30th August 2013 and prayed that this court do review its ruling and order delivered on 23rd August 2013. The second prayer was that it discharges and/or varies, corrects and no amends and/or set aside the same. The grounds supporting the motion was that the ruling of the court in current form conflicts with the findings and judgment of Court of Appeal dated 25th July 2013. In Civil Appeal No. 146 of 2011 which was decided 3 months later after the ruling herein on 25th July 2013. That therefore HCCC No. 260 of 2003 has already been determined and finalized.

[2] The applicant filed a replying affidavit. She stated that this application is a ploy to further delay this case and that the application has been brought in bad faith and in contempt of this court. That the application blindly seeks to set aside, sway and discharge the order without specifically directing the court at what extent he prays for the order to be discharged. That if the suit is abated no legal process can emanate from it. That the application is unmerited frivolous and vexatious and should be dismissed. The respondent said there is a valid ruling and it represents the best scenerio.

[3] Finally he argued that not attaching the decree or order sought to be reviewed was a fatal mistake and the motion ought to be struck out.

[4] Mr Wameyo Learned Counsel for the firs defendant supported the submissions by Mr Matheka for the plaintiff/respondent. He argued that the motion is incurably defective. He stated that what is reviewed is either a decree or order not judgment or ruling. He prayed that the same be dismissed. It is not denied in this case that the decree or order sought to be reviewed on this case is not attached. Justice R.N. Nambuye in dealing with this issue in **Civil Case No. 1197 of 2005 Stephen Munga Maingi -vs- The Government of the United States of America and US Agency for International Development** said

*"(a) by a decree or order from which the appeal is allowed by this Act, but from which no appeal has been preferred or*

*(b) by a decree or order from which no appeal is allowed by this Act may apply for a review of judgment to the court which passed the decree, or made the order and the court may make such order there on as it thinks fit"*

[5] From the above list of authorities it is quite clear that not attaching the order or decree sought to be reviewed is fatal. The application cannot be sustained. The application for review is therefore dismissed with no order as to costs.

**Dated and delivered in open court at Mombasa this 14th day of November 2014.**

**S. MUKUNYA**

**JUDGE**

**14.11.2014**

In the presence of:

Mrs. Olouch advocate for Mr. Wameyo advocate for the plaintiff.