



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPLICATION NO. 11 OF 2008**

**BETWEEN**

**JAMES MWASHORI MWAKIO ..... APPLICANT**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... RESPONDENT**

*(Application seeking enforcement of the Court of Appeal judgment (Kneller, Hancox, JJ.A. & Nyarangi, Ag. J.A.) dated 3<sup>rd</sup> April, 1984*

*in*

*Civil Appeal Nos. 28 of 1982 & 69 of 1983 (Consolidated)*

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**RULING OF THE COURT**

The applicant, **JAMES MWASHORI MWAKIO**, appears in person as he has always done in the previous matters before this Court. That being the case, the Court has granted him some latitude so that he could ventilate his grievances. For example, the application is entitled:-

***“Notice of motion based on part 1 general section 3 of Court of Appeal Rule dealing with abuse of Court process giving Court of Appeal unlimited power to invite Mr. Le Pelley and Mr. A. Mohamed instead of Miss Wambani to review Court of Appeal Ruling delivered today on Civil Application 283/2006 on appeal 69/83 where the Honourable Court declined to enforce its judgment of 3<sup>rd</sup> April, 1984 for reasons I infer in my certificate of urgency of this Notice of Motion hopefully on my waiver.”***

And at the bottom he signs as follows:-

**J.M. MWAKIO**

**VICTIM OF CORRUPTION AND TERRORISM**

**8/2/2008.”**

But what does the applicant seek from this Court in this application? We can do no better than reproduce the contents of this **Application No. 11 of 2008** filed in this Court on 12<sup>th</sup> February, 2008. The application states:-

**“TAKE NOTICE THAT ON ..... 2008 at 9:00 a.m. in the forenoon or thereafter as soon as he can be heard, the applicant, James Mwashori Mwakio, shall move this Honourable Court as follows:-**

1) *That the Honourable Court of Appeal judgment of 3<sup>rd</sup> April, 1984 is binding and is non-negotiable, irrevocable and non-abandonable and as they have so well obeyed it partly by removing the terrorist occupants, the decision of the Court of Appeal of today 8<sup>th</sup> February, 2008 may only be construed as Solomonic decision to show Mr. Peter Le Pelley and Mr. A. Mohamed that they are duly bound to participate in this matter which in minimum demands their attendance to Court to receive the ruling to clear the impression that Court of Appeal has no jurisdiction to enforce its judgment they have disobeyed for 23 years.*

2) *That I respect Court of Appeal jurisdiction to make any decision on the quantum of damage on my claim according to its discretion.*

3) *That the Honourable Court may make any order it deems fair on this matter.”*

That is the application that came up for hearing on 10<sup>th</sup> March, 2010. As already stated, Mr. Mwakio prosecuted his application in person while the respondent, Kenya Commercial Bank Ltd., was represented by Miss A. Muema. As the application was served on Mr. A. Mohamed the Managing Director of Barclays Bank, Mr. Mohamed sent Mr. Paul Ogunde to represent him in this application.

In his address the applicant stated that he was seeking enforcement of the judgment dated 3<sup>rd</sup> April, 1984 since the respondent had rejected or refused to comply with the said judgment. The applicant then handed in his written submission.

In responding to the application, Miss Muema sought to rely on the replying affidavit sworn by Linda Anene. Miss Muema referred us to this Court’s ruling of 8<sup>th</sup> February, 2008 and finally submitted that this Court had become *functus officio* as regards the judgment of this Court dated 3<sup>rd</sup> April, 1984.

On his part, Mr. Ogunde associated himself with the submissions of Miss Muema and asked us to dismiss this application.

This litigation between the applicant (**James Mwashori Mwakio**) and **Kenya Commercial Bank Ltd.** has engaged this Court for a considerable time. This Court has had time to peruse the record relating to this litigation and especially the effect of this Court’s judgment dated 3<sup>rd</sup> April, 1984. It would appear that this is not the first time the applicant is before this Court seeking the enforcement of the judgment dated 3<sup>rd</sup> April, 1984. In ***JAMES MWASHORI MWAKIO V. KENYA COMMERCIAL BANK LTD – Civil Application No. Nai. 59 of 1998*** the applicant brought an application specifically on the enforcement of the same judgment of 3<sup>rd</sup> April, 1984. This Court (Gicheru, Tunoi & Shah, JJ.A.) dismissed that application on 4<sup>th</sup> June, 1998 saying in part:-

**“It becomes necessary to find out what the judgment of this Court of 3<sup>rd</sup> April, 1984 decided. Mr. Mwakio seems to be under the impression that the judgment finally decided his rights in his favour and that the High Court had no jurisdiction to go beyond the scope of that judgment. But that judgment did not finally decide anything. It simply remitted the proceedings to the High Court to proceed to trial in the usual way. The suit was then heard by Porter, J. in the High Court and that court dismissed the suit on 14<sup>th</sup> April, 1988.”**

Regarding the finality of the litigation, the court stated:-

***“The appellant is of course a layman. He is not a lawyer. He harbours a deep sense of grievance on the loss of his property which is doubtless a prime property. But he must know that this Court has no jurisdiction to re-write an already delivered judgment in any other manner. Once this Court has delivered judgment it brings to finality that particular litigation between the parties save for the limited application of the slip rule.***

***Even if the appellant knows this fundamental principle he does not wish to accept it. We are afraid that he has to accept the principle. He must be told and we do so now, that he has come to the end of the road .....***”

Apparently, the applicant took no heed of that advice and hence filed a notice of motion dated 31<sup>st</sup> October, 2006 which was a rehash of the same issue raised in the earlier application, which had been dismissed. That application of 31<sup>st</sup> October, 2006 was considered by this Court (*Githinji, Waki & Deverell, J.J.A.*), and after going over the history of the litigation the Court dismissed the application by its ruling delivered on 8<sup>th</sup> February, 2008, in which it stated inter alia:-

***“It is clear from the above analysis that the applicant has asserted on several previous occasions what he now asserts before us that the decision made by this Court on 3<sup>rd</sup> April, 1984 in Civil Appeal No. 69 of 1983 this Court gave judgment in his favour against Kenya Commercial Bank Ltd. It is also clear that this Court has on several occasions consistently found his construction of tenor of the judgment of 3<sup>rd</sup> April, 1984 to be wholly erroneous. We gave considerable latitude to the applicant to ventilate what he passionately felt was a misconstruction of the court order or otherwise a favourable judgment “stolen” from him. But in the end, we must agree with learned counsel for the respondent Ms. Wambani, that this Court has become *functus officio* regarding the construction of the judgment of this Court dated 3<sup>rd</sup> April, 1984 in Civil Appeal No. 69 of 1983.***

***For those reasons, we dismiss the application with no order as to costs.”***

It is important to note that the application was dismissed on 8<sup>th</sup> February, 2008, and only four days later (12<sup>th</sup> February, 2008), the applicant filed the present application in which he describes himself as ***“Victim of Corruption and Terrorism”***.

The applicant passionately argued his application and as it happens with an overwrought litigant, he is quite ready and willing to vilify anybody who does not support his point of view. That is why in this application, the Managing Director of Barclays Bank of Kenya Ltd. was dragged into this dispute, when he clearly has nothing to do with it.

Having carefully considered the applicant’s oral and written submissions and the history of this matter, we can do no better than reiterate what the Court has repeatedly told the applicant that he has come to the end of the road. The sooner the applicant accepts this bitter truth, the better.

We must now repeat, and emphatically so, that the Court has become *functus officio* regarding the construction and enforcement of the judgment of this Court dated 3<sup>rd</sup> April, 1984 in Civil Appeal No. 69 of 1983. Accordingly we dismiss this application with no order as to costs, but we would warn the applicant that the Court might start awarding costs against him over these repeated applications.

***Dated and delivered at NAIROBI this 7<sup>th</sup> day of May, 2010.***

**R.S.C. OMOLO**

.....

**JUDGE OF APPEAL**

**E.O. O'KUBASU**

.....

**JUDGE OF APPEAL**

**J.W. ONYANGO OTIENO**

.....

**JUDGE OF APPEAL**

*I certify that this is a  
true copy of the original.*

**DEPUTY REGISTRAR**