

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, SHAH & BOSIRE, J.J.A
CIVIL APPLICATION NO. NAI. 191 OF 2001 (UR. 103/2001)**

BETWEEN

CHARLES EDWARD NJOROGEAPPLICANT

AND

GRACE WAMBUI WAMANDARESPONDENT

**(Application for correction of errors in the majority
Judgment of the Court of Appeal Nakuru (Omolo, Shah,
& Bosire J.J.A.) delivered on 23rd February, 2001**

in

CIVIL APPEAL NO. 126 OF 1999)

RULING OF THE COURT

It has been held time and again that once a judgment of this Court is pronounced it cannot be varied or set aside even if it could be shown that the Court may have erred. The application which is now before us seeks to set aside and vary the judgment of the Court delivered on **23rd day of February, 2001** on the ground that fresh evidence unearthed shows that the land, the subject matter of the appeal, are shares in a public company as opposed to a private company. Such evidence was not before the superior court. Nor was it before this Court. This is a Court of Record and it goes by record before it. It cannot after judgment look at fresh evidence even if such evidence could not have been available earlier. The application before us is an abuse of the process of court. It is dismissed with costs which we assess at Shs.4,000/=

Dated and delivered at Nairobi this 3rd day of August, 2001

R.S.C. OMOLO

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.