



**Peter Odiwuor Ngoge t/a O.P. Ngoge & Associates v Onyango &
5 others; Attorney General & another (Interested Party) (Petition
18 of 2015) [2021] KESC 10 (KLR) (Civ) (22 October 2021) (Ruling)**

Neutral citation: [2021] KESC 10 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL
PETITION 18 OF 2015
PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
OCTOBER 22, 2021**

BETWEEN

PETER ODIWUOR NGOGE T/A O.P. NGOGE & ASSOCIATES APPLICANT

AND

JOSEPHINE AKOTH ONYANGO 1ST RESPONDENT

SIMON OTIENO ONYANGO 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

**DIRECTOR OF CRIMINAL INVESTIGATIONS DEPARTMENT 4TH
RESPONDENT**

SEHIT INVESTMENTS LIMITED 5TH RESPONDENT

KENYA COMMERCIAL BANK LTD 6TH RESPONDENT

AND

ATTORNEY GENERAL INTERESTED PARTY

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS INTERESTED
PARTY**

*(Being an Appeal arising from the Judgment of the Court of Appeal delivered
at Nairobi on the 2nd October 2015 in Civil Appeal No. 51 of 2014)*

An application to review a dismissed application for review is res judicata.

Reported by John Ribia



Civil Practice and Procedure – *res judicata* – application for review – application to review a dismissed application for review - whether an application to review a dismissed application for review was *res judicata*.

Brief facts

The Supreme Court had dismissed an appeal by the applicant in the instant matter for want of jurisdiction. Aggrieved, the applicant applied to review the decision of the Supreme Court, the review application was similarly dismissed. Further aggrieved, the applicant filed the instant application to review the decision that dismissed his review application.

Issues

Whether an application to review a subsequent dismissed application for review of a judgment, in which the Supreme Court dismissed an appeal for want of jurisdiction, was *res judicata*.

Held

1. The principle of *res judicata* was squarely applicable as the Supreme Court had in finality and without equivocation settled both the question of the appeal and review thereof. It was an exercise in futility for the Supreme Court to be called upon again to determine the same issues.
2. Upon delivery of judgment and the ruling on review, the Supreme Court became *functus officio* and there was no known jurisdiction for it to revisit any aspect of the appeal. A review upon a review was completely alien to the Supreme Court Act and the Rules made thereunder.

Application struck out.

Orders

The applicant was to pay costs of the application to the 1st 2nd and 6th respondents (the only parties that responded to the motion).

Citations

Cases

East Africa;

1. *John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others* Petition 17 of 2015; [2021] eKLR — (Explained)
2. *Menginya Salim Murgani v Kenya Revenue Authority* Civil Application 4 of 20914; [2014] eKLR — (Followed)

Statutes

None referred to

Advocates

None mentioned

RULING

1. On 5th October 2017, this Court delivered a Judgment in which it dismissed the appeal herein for want of jurisdiction and by a Ruling delivered on 23rd October 2018, the applicant's Motion for review of that Judgment was similarly dismissed. This being the third time the applicant is having a bite on the same cherry, the facts are not pertinent to the present Ruling.
2. Notwithstanding the finality of our decisions above, the Applicant, on 3rd November 2020, filed yet another application seeking orders to review the Judgment and Ruling on review of the same Judgment.



3. We have perused that application and can only but agree with the 6th respondent that;
 - i. The principle of *res judicata* is squarely applicable to the present Motion as this court has finally and without equivocation settled both the question of the appeal and review thereof. It is an exercise in futility for us to be called upon, again, to determine the same issues – see //*John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others*// [2021] eKLR.
 - ii. Upon delivery of Judgment and the Ruling on review, this court became *functus officio* and there is no known jurisdiction for it to revisit any aspect of the appeal. Certainly, a review upon a review is completely alien to the Supreme Act and the Rules made thereunder. We settled the issue of *functus officio* in *Menginya Salim Murgani v Kenya Revenue Authority* [2014] eKLR.
 - iii. On costs, the same principles above apply save that, as the present Motion is utterly frivolous and vexatious, the applicant shall bear the costs hereof.
4. In the event and for reasons above:
 - i. The Notice of Motion dated 14th September 2020 and filed on 3rd November 2020 is hereby struck out.
 - ii. The applicant shall pay costs thereof to the 1st, 2nd and 6th respondents, the only parties that responded to the Motion.
5. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF OCTOBER, 2021.

P. M. MWILU

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**DEPUTY CHIEF JUSTICE & VICE
 PRESIDENT OF THE SUPREME COURT**

M. K. IBRAHIM

.....
JUSTICE OF THE SUPREME COURT

S. C. WANJALA

.....
JUSTICE OF THE SUPREME COURT

NJOKI NDUNGU

.....
JUSTICE OF THE SUPREME COURT

I. LENAOLA

.....



JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

