



**Ngoge t/a OP Ngoge & Associates v Onyango & 4 others; Attorney General & another  
(Interested Parties) (Petition 18 of 2015) [2019] KESC 8 (KLR) (29 November 2019) (Ruling)**

*Peter Odiwuor Ngoge t/a O.P. Ngoge & Associates v Josephine Akoth Onyango  
& 5 others; Attorney General & another (Interested Parties) [2019] eKLR*

Neutral citation: [2019] KESC 8 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
PETITION 18 OF 2015  
DK MARAGA, CJ & P, MK IBRAHIM, JB OJWANG, SC WANJALA & I LENAOLA, SCJJ  
NOVEMBER 29, 2019**

**BETWEEN**

**PETER ODIWUOR NGOGE T/A O.P. NGOGE & ASSOCIATES ..... APPELLANT**

**AND**

**JOSEPHINE AKOTH ONYANGO ..... 1<sup>ST</sup> RESPONDENT**

**SIMON OTIENO ONYANGO ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**THE DIRECTOR OF CRIMINAL INVESTIGATIONS DEPARTMENT .... 4<sup>TH</sup>  
RESPONDENT**

**KENYA COMMERCIAL BANK LTD ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**THE HON ATTORNEY GENERAL ..... INTERESTED PARTY**

**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)*

**Exceptional circumstances under which the Supreme Court could review its decisions**

*The applicant filed the instant application seeking orders for review of a judgment and order of the court. The court highlighted the exceptional circumstances under which it could review its decisions.*

Reported by Kakai Toili



**Jurisdiction** – *jurisdiction of the Supreme Court – jurisdiction to review its own decisions – claim by the applicant that he was at the risk of execution of the bill of costs which would be highly prejudicial during the pendency of the proceedings before the African Commission on Human and Peoples Rights - circumstances in which the Supreme Court could review its own decisions - what were the exceptional circumstances under which the Supreme Court could review its decisions – Constitution of Kenya, 2010, chapter 10*

### **Brief facts**

The applicant filed the instant application seeking orders for review of a judgment and order of the court. The applicant submitted afresh on matters that had been heard and determined by the High Court, Court of Appeal and the instant court and faulted all of them for allegedly misconstruing and misunderstanding the case as argued before them. The applicant also alleged that he had filed a complaint against the Republic of Kenya at the African Commission on Human and Peoples Rights on matters touching on those decisions.

The applicant claimed that a review of the court’s judgment was necessary because he was at the risk of execution of the 1<sup>st</sup> and 2<sup>nd</sup> respondents’ bill of costs which action he further claimed would be highly prejudicial to him during the pendency of the proceedings before the African Commission on Human and Peoples Rights.

### **Issues**

What were the exceptional circumstances under which the Supreme Court could review its decisions?

### **Held**

1. Taking into account the edicts and values embodied in Chapter 10 of the Constitution, the Supreme Court had no jurisdiction to sit on appeal over its own decisions or to review its decisions. However, in exercise of its inherent powers, the court could upon application by a party, or on its own motion, review, any of its judgments, rulings or orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances should be limited to situations where:
  1. The judgment, ruling or order was obtained by fraud or deceit;
  2. the judgment, ruling or order was a nullity, such as, when the court itself was not competent;
  3. the court was misled into giving judgment, ruling or order, under a mistaken belief that the parties had consented thereto;
  4. the judgment or ruling was rendered on the basis of a repealed law or as a result of, a deliberately concealed statutory provision.
2. None of the exceptional circumstances were properly applicable to the instant case. The applicant only moved the court for a review of its judgment 3 years after delivery of the judgment and only because he was threatened with execution by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. That action was not a ground for seeking a review of the judgment.
3. Whereas the African Commission on Human and Peoples Rights was indeed seized of a complaint against the Republic of Kenya by the applicant, that fact alone was not sufficient to move the court to review its judgment.

*Application dismissed; applicant to bear the costs.*

### **Citations**

#### **Statutes**

None referred to

#### **Advocates**

None mentioned



## RULING

1. Upon perusing the Notice of Motion application dated 22<sup>nd</sup> October 2018 and filed on 23<sup>rd</sup> October 2019 which is brought under the provisions of Articles 1(5)(6), 10, 19, 20, 21, 22, 27, 28, 29, 40, 50 and 258 of the Constitution as well as Section 14(5) of the Supreme Court Act seeks Orders for review of the Judgment and order of this Court dated 2<sup>nd</sup> October 2015 and;
2. Upon considering the Supporting Affidavit of Peter O. Ngoge Advocate, sworn on 22<sup>nd</sup> October 2015 and a further Affidavit sworn on 3<sup>rd</sup> May 2019 as well as the 6<sup>th</sup> Respondent's Grounds of Opposition dated 29<sup>th</sup> March 2019 and filed on the same date and;
3. Upon reading written submissions by the Applicant dated and filed on 11<sup>th</sup> June 2019 together with submissions in response to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' submissions wherein the Applicant has submitted afresh on matters that have been heard and determined by the High Court, Court of Appeal and this Court, faulting all of them for allegedly misconstruing and misunderstanding the case as argued before them; and adding that he has filed a complaint against the Republic of Kenya at the African Commission on Human and Peoples Rights on matters touching on those decisions and;
4. Noting that the Applicant also submits that a review of this Court's Judgment is necessary because he is now at the risk of execution of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Bill of Costs taxed at Kshs.5,000,000 or thereabouts which action will be highly prejudicial to him during the pendency of the proceedings before the African Commission on Human and Peoples Rights and;
5. Upon reading the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's submissions dated and filed on 26<sup>th</sup> July 2019, where it was submitted that once this Court delivered its Judgment on the appeal on which the present Application is predicated, it became functus officio and has no jurisdiction to stay or review the said Judgment and further, that the African Court on Human and Peoples Rights has no superiority over this Court neither can it supervise it and therefore its proceedings are of no consequence to the present Application and;
6. Upon reading the 6<sup>th</sup> Respondent's submissions wherein it contends that this Court struck out the Applicant's appeal on the ground that the Appeal did not meet the threshold under Article 163(4) (a) of the Constitution which position still obtains and that therefore a review in respect of the same matter is untenable and;
7. Furthermore, noting that the 5<sup>th</sup> Respondent contends that the Application is misguided because the Applicant is seeking a review of the Order of taxation of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Bill of Costs as opposed to the substantive Judgment and that in any event, the proceedings before the African Commission on Human and Peoples Rights are strange to it and contravene the concept of territorial sovereignty;
8. We note that the law as regards review of Judgments of this Court was settled on a Ruling delivered on 24<sup>th</sup> February in *Petition No.6 of 2014 Fredrick Otieno Outa v Jared Odoyo Okello & 3 Others e[KLR]* wherein we rendered ourselves as follows:

Taking into account the edicts and values embodied in Chapter 10 of our Constitution, we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion,



review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- (i) the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- (ii) the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- (iii) the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- (iv) the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of , a deliberately concealed statutory provision.

These principles are no doubt informed by various judicial authorities, in other jurisdictions, such as the ones we have cited from Nigeria, United Kingdom, India and South Africa”. [Emphasis added]

9. Upon applying the above principles to the present case, it is quite obvious to us that none of the exceptional circumstances set out above are properly applicable to this case. It can in fact be seen that the Applicant only moved this Court for a review of its Judgment, 3 years after delivery of the said Judgment and only because he was threatened with execution by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. That action is not a ground for seeking a review of the Judgment.
10. Furthermore, whereas the African Commission on Human and Peoples Rights is indeed seized of a complaint against the Republic of Kenya by the Applicant, that fact alone is not sufficient to move this Court to review its Judgment.
11. And in the circumstances, the Application, Affidavit in support, verbose as they are, and the largely irrelevant submissions by the Applicant, have not swayed our collective minds towards a review of our Judgment as prayed.
12. In the circumstances, our final Orders are that:
  - (a) The Application dated 22<sup>nd</sup> October 2018 is hereby dismissed.
  - (b) As costs follow the event, the Applicant shall bear the costs thereof.
13. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2019**

.....

**D. K. MARAGA**

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

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**M. K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

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**J. B. OJWANG**

**JUSTICE OF THE SUPREME COURT**

.....

**S. C. WANJALA**



**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**

