

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

(Coram: Mwilu, DCJ & VP, Ibrahim, Wanjala, Njoki & Lenaola, SCJJ)

PETITION OF APPEAL NO.18 OF 2015

–BETWEEN–

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

–AND–

- | | | |
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| <ol style="list-style-type: none">1. JOSEPHINE AKOTH ONYANGO2. SIMON OTIENO ONYANGO3. THE DIRECTOR OF PUBLIC PROSECUTIONS4. THE DIRECTOR OF CRIMINAL INVESTIGATIONS DEPARTMENT5. SEHIT INVESTMENTS LIMITED6. KENYA COMMERCIAL BANK LTD |  |RESPONDENTS |
|---|--|------------------------|

–AND–

- | | | |
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| <ol style="list-style-type: none">1. THE HON. ATTORNEY GENERAL2. THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS |  |INTERESTED PARTIES |
|---|---|--------------------------------|

*(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**)*

RULING OF THE COURT

[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 Co 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.

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P. M. MWILU
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

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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