



**Pertet & 2 others (Suing as the Administrators of the Estate of Stephen
Leiyen Pertet) v Saika & another (Environment and Land Miscellaneous
Application 9 of 2019) [2023] KEELC 16751 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16751 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 9 OF 2019
MN KULLOW, J
MARCH 22, 2023**

BETWEEN

**SIMON SALAON PERTET 1ST APPLICANT
ANN LANOI PERTET 2ND APPLICANT
EDWARD PARSINTE PERTET 3RD APPLICANT
SUING AS THE ADMINISTRATORS OF THE ESTATE OF STEPHEN LEIYAN
PERTET**

AND

**JOHN MEITAMEI OLE SAIKA 1ST RESPONDENT
TOWN CLERK OF NAROK 2ND RESPONDENT**

RULING

1. The Notice of Motion dated October 23, 2020, the Applicants sought for the following orders:-
 - a. Spent
 - b. Spent
 - c. That the Honourable court be pleased to review it's ruling delivered on May 5, 2020
 - d. That the costs of the application be provided for.
2. The application was based on the ground that the subordinate court had upheld a preliminary objection seeking a declaration that the suit before the court had abated by operation of law and the court entered Judgment against the defendant/applicant despite the abatement of the suit which was erroneous.



3. The applicant further contented they filed an application before this court seeking *inter alia* stay of execution of the Judgment of the court.
4. By way of preliminary Objection and the respondent has filed a Preliminary Objection on November 8, 2019 and the said application was directed to be disposed off by way of written submissions and the applicant filed their submissions on January 21, 2020 and ruling delivered on May 5, 2020 upholding the Preliminary Objection on the basis that the applicant had not filed their submissions even though the said submissions were filed.
5. The application was further supported by the Affidavit of Anne Pertet wherein she deponed to among other issues the applicant had filed their submissions on January 1, 2020 and a copy of the same was duly annexed to the said affidavit.
6. The applications was opposed by the Respondent who had filed ground of opposition to the application contending that there was no basis for the Review of the orders the court delivered on May 5, 2020 and that the application does not meet the threshold for review, since there are no compelling reasons or error. Apparently on the face of the court record and further that the grounds cited by the applicant do not qualify as a ground for Review contended under Order 45 Rule 1 of the [Civil Procedure Rules](#) and further that the Applicant ought to have sought for Review before the subordinate court.
7. I have considered the application before me and the grounds of opposition filed by the respondent and the submissions filed.
8. This is an application which the applicant seeks the court to review the Ruling delivered on May 5, 2020 and the main issue for determination before me is whether the applicant has satisfied the requirements to review order or Ruling made by the court. It is now well established that a party may seek for Review Order, Ruling or Judgment where there is an error apparent on the record, and whether the party seeking the said review has obtained new or fresh evidence which were not in his possession at the time or for any other sufficient reason.
9. In the instant application the applicant contends that her preliminary objection was dismissed on account of not filing her submissions but in her affidavit in support of the application she annexed a copy of submissions filed on January 1, 2020. The Respondent on his part in his grounds of opposition has not stated whether the said submissions were ever served on him or not. I have checked the court record and I have not seen a copy of the said submissions, but I have no reason to doubt that the submissions filed by the applicant was duly received and stamped by the court.
10. In the case of [National Bank of Kenya =vs= Ndungu Njau](#) (1997) eKLR, the court held that a review may be granted if the court so considered that it is necessary to correct an error and the face of the record or omission on the part of the court and that the error or omission must be apparent and should not require elaborate argument to be established.
11. The applicant having produced a copy of the submission that is not disputed by the respondent is clear that indeed there was an omission on the part of the court and in view of the above, I find that the applicant has disclosed the error or omission on the part of the court and I will accordingly allow the Notice of Motion dated October 23, 2023, and I order each party to bear it's own costs, and I issue that there be a stay of execution pending the hearing and determination of the applicants Appeal herein.

DATED SIGNED DELIVERED, Virtually at **MIGORI** this **22nd** Day of **MARCH 2023**.

MOHAMMED .N. KULLOW



JUDGE

In presence of;-

Tom Maurice – Court Assistant

