



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 7 OF 2016

JEREMIAH M' NJOGU.....APPLICANT

VERSUS

DISTRICT LAND REGISTRAR, MERU CENTRAL.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

DISTRICT SURVEYOR, MERU CENTRAL.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

H. YOUNG & CO. (E.A) LTD.....1ST INTERESTED PARTY

MARTHA NAITORE MURITHI.....2ND INTERESTED PARTY

GELVERSE MUTETHIA JOHN.....3RD INTERESTED PARTY

RULING

Introduction

Before me is the Notice of Motion brought under *Order 42 rule 6, Order 50 rule 6 and Order 51 of the Civil Procedure Rules* dated 24th September 2020. The applicant is seeking the following orders:-

- (1) That the Honourable Court be pleased to rectify its judgment records given on 28th February 2019 for accurate Court records.***
- (2) That the Honourable Court be pleased to review its judgment in a view to quashing the same due to diverted concept during time of decision making.***
- (3) That costs be granted to the applicant.***

The application is premised on the following five (5) grounds shown on the face of the said application:-

- (a) That this Court's judgment records dated 28th February 2019 page No. 7 last paragraph and page No. 8 paragraph No. 1 (one) is not accurate because it does not relate to the issues of my application, which was about Court of Appeal controversial consent order.***
- (b) That my application was seeking to compel the respondents to comply with Court of Appeal consent order and not High Court matter as stated in this Court's judgment.***
- (c) That my verifying affidavit and my statement of facts are clear that my application was about the Court of Appeal matter and not the High Court matters.***
- (d) That this Court's judgment was not properly directed due to the diverted mind of the Court, towards different subject matter not brought before this Court.***

(e) That it is put to this Honourable Court that the dispute over substance of Court of Appeal order continues because it is the office of this Court's Deputy Registrar which re-introduced to this Honourable Court matters presided and finalized by the Court of Appeal by drawing (an order) a DECREE for the Court of Appeal without jurisdiction and the said Decree incited controversy over substance of Court of Appeal order, and therefore litigation over substance of the Court of Appeal order which dispute has tarried in this Court from 1991 to this day and in that circumstances the applicant herein is suffering due to problem created by the office of this Honourable Court which problem this Court should sought out without misjudging the applicant by twisting justice.

The application is further supported by an affidavit sworn by the applicant where he made the following depositions:-

- (1) That my application dated 23rd November 2015 was dismissed by this Honourable Court on 20th February 2019 at my dismay.
- (2) That the Honourable Court's judgment in this case refers the matter of its judgment to High Court decision instead of Court of Appeal judgment, and in that case this Honourable Court missed the point of the ex-parte Applicants argument and gave an inconsiderate decision.
- (3) That it is just and appropriate for this Honourable Court to review its judgment in a review to repel it and to deliver a justified judgment where execution of the Court of Appeal judgment is put to consideration and to avoid discrepancy between this Court and the Court of Appeal.
- (4) That I have no idea of a Nyeri High Court Misc. Civil Application No. 1990 neither Nairobi High Court Misc. Application No. 43 of 1991 as referred to in this judgment and in that case this mistaken Court's record should not remain a Court judgment record to which record this Court's judgment differ with my application.
- (5) That in that case, this Court's judgment was not directed on the proper sentiment due to the basic diverted concept borne over the matter, and in that case, I pray this Honourable Court to re-consider its judgment in consistent with Court of Appeal order.
- (6) That my case is properly expressed through my verifying affidavit and my statement of facts. I attach the instant 1st interested parties replying affidavit dated 2nd July 2019 and the controversial Court of Appeal order dated 17/5/1991 for this Honourable Court's reference in this matter. The documents are marked as "JMN 1 (a) and (b)".
- (7) That I put to this Honourable Court that its dismissal of the application to compel the respondents and the interested parties to comply with the Court of Appeal order is to become indifferent with Court of Appeal judgment and is justification of the disobedience of Court of Appeal order and justification of the execution of High Court judgment done contrary to the Court of Appeal order, and I beg this Honourable Court to maintain Judicial integrity and consider this matter to have been settled by the Court of Appeal and therefore enforce its execution.
- (8) That as this Honourable Court preside over this case, it is put to the Court's that this matter was finalized by the Court of Appeal in 1991 by consent of the disputing parties and the interested parties, but out of unprecedented cause, this Court's Deputy Registrar drew a confusing (order) Decree for the Court of Appeal as opposed to the Court of Appeal order which Decree caused upheaval as the said Deputy Registrar and the Respondents and the 2nd and 3rd interested parties concept was that the Court of Appeal dismissed the application for stay of execution in favour of execution of High Court judgment as opposed to the Court of Appeal order and that is the respondent's and 2nd and 3rd interested parties argument to-date meaning that controversy against the Court of Appeal order is incited by this Court's office and it is upon this Court's office and it is upon this Court to put the matter right.
- (9) That it is put to this Court that the High Court illegal Decree drawn by the Deputy Registrar of this Court was used by the High Court Executive officer to enforce execution of the High Court judgment which got executed by the Court's Executive officer against the Court of Appeal order. Attached and marked as "JMN 2 (a) and (b) are the D.R. Decree dated 5th September 1991 and the Court Executive officer's letter dated 28th July 1992.
- (10) That it is put to this Court that the cause of controversy over execution of Court of Appeal order which is the cause of this application emerged from the illegal Decree drawn by this Court's Deputy Registrar and, it is therefore this Court's obligation to put things right by compelling the instant respondents and the instant interested parties to comply with the Court of Appeal order, and the 1st and 3rd respondents to reinstate the suit land for the appellants to execute the Court of Appeal order.

When the said application came up for hearing on 9th November 2020 through video link, the parties agreed to dispose of the same by way of affidavit evidence. The parties also agreed that each side were to take 14 days to file their respective affidavits starting with the applicant. At the expiry of the timelines agreed upon, the respondents and interested parties did not comply.

Legal Analysis and Decision

The gist of the application before me is that the applicant is seeking an order for review of the judgment of this Honourable Court issued on 28th February 2019. The applicable law for review of judgment and/or order is **Section 80 of the Civil Procedure Act** as read with **Order 45 of the Civil Procedure Rules** made thereunder.

Order 45 Rule 1 provides as follows:-

45 (1) Any person considering himself aggrieved:-

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) By a decree or order from which no appeal is hereby allowed,

And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay”.

It is trite law that in an application for review, the applicant must show that there is a discovery of a new and important matter or evidence which could not be produced by him when the decree was passed. The applicant must also demonstrate that he made due diligence to produce the same but could not be able due to reasons beyond human control.

First, the applicant has not shown this Court or the discovery of any new matter or evidence and how he went about in making the discovery. The applicant has not also explained why he did not produce the same when the decree and/or order was made. The documents which the applicant annexed to his supporting affidavits include documents and Court’s orders which were made long before the subject decree and/or order was made. He has not given any explanation why he could not produce them when the decree/order was made. There has to be reasonable and satisfactory explanation for a Court to accept new evidence by way of review. In this case, no such explanation has been given by the applicant.

The Court of Appeal in the case of **National Bank of Kenya Ltd Vs Njau (1995-98) 2 E.A 231 (C.A.K)** held as follows:-

“A review may be granted whenever the Court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review. In the instant case, the matters in dispute had been fully canvassed before the learned Judge who made a conscious decision on the matter in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of the law, it could be a good ground for appeal but not review. An issue hotly contested cannot be reviewed by the same Court which had adjudicated upon it”.

I agree with the above decision. Having expressed my view on the substance of this application, I also wish to make the following observation. First, the decree and order of this Court issued on 28th February 2019 is in respect of this Judicial Review proceedings which the applicant is seeking an order for review. **Order 45 Rule 6 of the Civil Procedure Rules Cap. 21 Laws of Kenya** provides as follows:-

“No application to review an order made on an application for a review of a decree or order passed or made on a review shall be entertained”.

It is clear from this provision that the law bars any application to review an order made on review. My understanding why the law bars a party from seeking review from a decree and/or order passed and/or made in a Judicial Review proceedings is a good public policy that will ensure that once a Court has been called upon to look at its own decision by way of review, it will be wrong to call on the same Court to once again reconsider on a decision it has reviewed.

For the aforesaid reasons, I find the Notice of Motion dated 24th September 2020 lacking in merit and the same is hereby dismissed. Since no response was filed by the respondents and/or interested parties, I make no order as to costs. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED AT GARISSA THIS 28TH DAY OF JULY, 2021.

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E.C. CHERONO

ELC JUDGE

In the presence of:

1. Applicant/Advocate- Absent
2. Respondents/Advocate- Absent
3. Fardowsa ; Court Assistant- Present