

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NUMBER 293 OF 2009

LEONARD GICHURU.....APPELLANT

VERSUS

FREDRICK WAWERU KINYANJUI.....RESPONDENT

R U L I N G

The subject matter of this ruling is the motion dated 14th February, 2018 taken out by the Appellant/Applicant in which he sought for the following orders: -

1. The orders given by this Honourable Court (Hon. Lady Justice Ang'awa) on 8th February, 2012 be reviewed in terms recommended by the Land Registrar and Surveyor at Kiambu in their letter dated 7th February, 2018 addressed to the Deputy Registrar of this Honourable Court.

2.Costs of this application be provided.

The motion is supported by the affidavit of Peter Muiruri Mugu. It would appear from the record that despite the motion having been served, there is no response filed.

I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. The Appellant/Applicant is basically seeking for an order for the review of the orders issued by this court on 8th February, 2012. The Applicant pointed out that pursuant to the aforesaid orders the Land Registrar and the Land Surveyor, Kiambu, were directed to rectify the boundary of the parcel of land, formerly known as Karai/Karai/2852 using blue gum trees which existed at the time of issuing the order. The Applicant averred that, when the Land Registrar and Surveyor visited the aforesaid land on 1st February, 2018, they discovered that the blue gum trees referred to by the court no longer existed hence it became impossible to comply with the court order. It is for this reason that the Applicant took out the current motion.

It is the submission of the Applicant that it is necessary to review the aforesaid order so that it refers to the measurement of the Land Registrar as indicated on 5th February, 2003, that the encroachment into the land was twelve (12) yards.

Having considered the materials placed before this court, I am convinced that the motion has merit. The same is allowed as prayed save that each party shall meet its own costs.

Dated, signed and delivered at Nairobi this 13th day of July, 2018.

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J K SERGON

JUDGE

In the presence of

..... *for the Appellant*

..... *for the Respondent*