



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 42 OF 2009

POLLYMARRIES MBITHE MUTUA.....PLAINTIFF

VERSUS

PETER MWANZIA MWANIA.....1ST DEFENDANT

CHRISTOPHER KATISYA.....2ND DEFENDANT

MUTUA MAWEU.....3RD DEFENDANT

RULING

1. In the Application dated 27th September, 2017, the Plaintiff is seeking for the review and setting aside of the Ruling of this court dated 30th June, 2017.
2. The Application is supported by the Affidavit of the Plaintiff who has deponed that the impugned Ruling of 30th June, 2017 struck out his suit; that before filing this suit, she had filed Machakos HCCC No.434 of 1998; that before the said suit could be heard, the Defendants filed Matungulu Land Dispute Tribunal Case No. 14(a) and (b) of 1999 and that when his Application for Judicial Review was declined, he filed the current suit.
3. The Plaintiff deponed that this suit was consolidated with HCCC No. 434 of 1998; that this suit was struck out on a technicality and that she is the legal owner of the suit land.
4. In response, the Defendants deponed that there is no mistake or error apparent on the face of the record; that the Applicant has not demonstrated the existence of any sufficient reasons for orders of review to issue and that the Plaintiff has filed numerous suits in respect to the same subject matter.
5. The Plaintiff's counsel submitted that this suit was consolidated with HCCC No. 434 of 1998 which was partly heard; that the Applicant has been on the suit land since 1984 and that her rights over the suit land have been infringed by the Defendants.
6. The Defendants' advocate submitted that the Application does not disclose any ground on the basis of which the court can review its Ruling; that there is no discovery of new and important matter or evidence nor is there some mistake or error apparent on the face of the record and that there is nothing that can constitute "*any other sufficient reason*" to justify a review of the Ruling of the court.
7. The Defendants' counsel submitted that if the Plaintiff was of the view that the court erred in law, she was at liberty to Appeal against the decision and that the Application should be dismissed.
8. The Plaintiff is seeking for the review of the Ruling of this court dated 30th June, 2017. The Ruling of this court dated 30th June, 2017 struck out the current suit on the basis that the same was an abuse of the court process. This was informed by the fact that the suit had been filed to challenge the decision of the Land Disputes Tribunal after the Plaintiff filed a Judicial Review Application and lost.
9. Order 45 Rule 1(1) of the Civil Procedure Rules provides that for an Applicant to succeed in an Application for review, he needs to establish that there is discovery of new and important matter or evidence which was not within his knowledge and could not be produced at the time the Decree was made despite exercise of due diligence; or there is a mistake or error apparent on the face of the record; or there is some other sufficient reason to set aside the order and the Application must be made without unreasonable delay.
10. The perimeters for reviewing an order or Decree of the court were set out in the case of *National Bank of Kenya Ltd vs. Ndungu Njau*,

Civil Appeal No. 211 of 196 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 require no 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.”

11. Indeed, the above holding has been a cornerstone in our jurisprudence to dissuade parties from filing Appeals in the trial court disguised as Applications for review. The power of review can only be exercised by the court for correction of a mistake and not to substitute a view that a Judge has taken on a matter.

12. This court held the view that the filing of the current suit was an abuse of the court process by the Plaintiff. If indeed the Plaintiff believes that the holding of the court was a procedural technicality which has occasioned her injustice, then that is a question that should be handled by an Appellate Court and not this court. This court has no jurisdiction to re-evaluate the evidence on record.

13. In any event, if indeed the Plaintiff is in the process of prosecuting HCCC No. 434 of 1998, then she should direct her energy to that suit instead of flogging a dead horse. Consequently, and for the reasons I have given above, I dismiss the Application dated 25th September, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE