

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. NO. 112 OF 2016 (OS)

JALAL MOHAMED TAYEBALI.....PLAINTIFF

VERSUS

TOTAL KENYA LIMITED.....DEFENDANT

RULING

1. On 25th April 2013 I delivered a ruling herein, the matter was then HC Misc. No. 32 of 2006, on behalf of GBM Kariuki J., wherein the court held that the suit was a land dispute disguised as a succession cause. It was directed that the matter be transferred to the Environment and Land Court.

2. The matter was conveyed to the Environment and Land Court and was allocated another number, being ELC No. 557 of 2013. It was directed on 4th December 2013, by Gacheru J, that the parties file appropriate proceedings in accord with the directions of 25th April 2013, where it had be ruled that the issued raised could not be dealt with in a summary manner through an originating summons. The applicant was aggrieved by the directions made by Gacheru J on 4th December 2013; he brought an application dated 5th August 2015 seeking review of the said directions. After hearing arguments from both sides, the ELC allowed the review application, and directed that the matter be returned to the High Court, Family Division.

3. The court file was returned to the Family Division of the High Court, where it was allocated its current number, and was mentioned before Muigai J. on 30th January 2017, who directed the applicant to file the relevant application. In compliance with the said directions, the applicant filed a Motion dated 23rd February 2017, seeking that judgment be delivered in the suit. The applicant complained in his application that GBM Kariuki J had delivered a ruling instead of a judgment, and wanted the court to deliver judgment in terms of the record. In response to the application, the respondent filed grounds of opposition. It is argued that the ruling by GBM Kariuki J of 25th April 2013 had not been reviewed, reversed, set aside, varied or vacated, and that no judgment could be delivered in the matter so long as that ruling was still intact.

4. The application was argued orally on 5th June 2017. Both sides breathed life on the averments made in their respective filings.

5. I agree with the respondent, this court pronounced itself on 25th April 2013 with regard to the jurisdiction of the High Court over the matter. That decision has not been set aside or reversed or varied. It remains valid. For as long as it subsists, the order that is sought in the application dated 23rd February 2017 cannot be available. It is not possible for the said ruling to sit side by side with a judgment in the matter. The application before me is not for review, so I have no basis for reviewing the order of 25th April 2013. In any event, nothing has been placed before me which would convince me that the said decision ought to be reviewed. The applicant should have appealed against it if he felt aggrieved by it.

6. There is no merit in the application dated 23rd February 2017. It is hereby dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF DECEMBER, 2017.

W. MUSYOKA

JUDGE