



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC No. 21 OF 2017

SERVE IN LOVE AFRICA (SILA) TRUST.....PLAINTIFF/APPLICANT

VERSUS

ABRAHAM KIPTARUS KIPTOO & 2 OTHERS.....DEFENDANTS/APPLICANTS

AND

AMBROSE KIPROP & 4 OTHERS.....3RD PARTIES/ RESPONDENTS

RULING

1. This is a ruling in respect of a Notice of Motion dated 26/4/2021 in which the Defendants/ Applicants seek the following order:-

1. **THAT** the court be pleased to review its orders made on 22/09/2020 by setting aside the order dismissing the application and in its place substitute the same with an order striking out the suit with cost to be borne jointly and severally by Ambrose Kiprop, David Chemworem, Moses Kingetuny Kipkulei, Samson Kipngetch Kibii and Erick Kiptum Teimuge the third parties in the proceedings.

2. The Applicants had filed a Notice of Motion dated 13/12/2019 in which they sought dismissal of the Plaintiffs suit. In a ruling delivered on 22/9/2020, the court declined to strike out the suit on the ground that there were proceedings pending in the Court of Appeal in civil Application No 47 of 2020 which had a bearing in this matter.

3. In Civil Appeal No 47 of 2020, the Respondents in Petition No 18 of 2016 had filed an application seeking extension of time within which to file an appeal against the judgment delivered in Petition No 18 of 2016. The Applicants argue that on 25/9/2020 Civil Application No 47 of 2020 was dismissed. The Applicants therefore argue that since Civil Application No 47 of 2020 has been dismissed, the ruling of this court delivered on 22/9/2020 should be reviewed with the result that the suit herein be struck out with costs.

4. The Applicants' application was opposed by the Respondent through a replying affidavit sworn on 10/5/2021. The Respondent contends that following the dismissal of Civil Application No 47 of 2020 by a single judge of the Court of Appeal, the Respondent in Petition No 18 of 2016 applied for constitution of a full bench to determine the application for extension of time as provided for under Rule 55 of the Court of Appeal Rules.

5. The Respondent contends that the full bench is yet to be constituted and that the Applicants are aware that the proceedings in the Court of Appeal arising from a judgment in Petition No 18 of 2016 are yet to be concluded and that a ruling from the Court of Appeal does not constitute discovery of new and important matter of evidence which would not have been discovered with exercise of due diligence and that this application is an abuse of the process of the court as the Applicants are aware that the proceedings before the Court of Appeal are yet to be concluded.

6. The parties were directed to file written submissions on 27/9/2021. As at 19/10/2021 when this ruling was reserved, it is only the Respondent who had filed submissions. The Applicants were given 7 days within which to file submissions from 19/10/2021. As the time of writing this ruling on 2/1/2022, no submissions had been filed and if any were filed, then they are not in the file.

7. I have considered the Applicants' application as well as the opposition to the same by the Respondent. I have also considered the submissions by the Respondent. The only issue for determination is whether the Applicants have met the threshold for grant of a review.

8. The Applicants contend that a ruling by a single judge on an application for extension of time constitutes discovery of new and important evidence which would not have been availed as at the time the ruling of the court was delivered on 22/9/2020. The Applicants were aware that there was a pending application before the Court of Appeal as regards the extension of time. What was not known is the outcome of

those proceedings.

9. The Applicants are aware that the Respondents in Petition 18 of 2016 have applied for constitution of a full bench of the Court of Appeal to determine the issue of extension of time. An application for constitution of a full bench is provided for under the Court of Appeal Rules. Once a full bench is constituted, it may or may not overturn the ruling of the single judge. It is therefore premature for the applicants to press for a review when they are aware that the proceedings before the Court of Appeal which have a bearing on this case are still pending.

10. From the above analysis, I find that the Applicants application lacks merit.

The same is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF JANUARY, 2022.

E. OBAGA

JUDGE

27.01.2022

In the virtual absence of parties who were aware of date of delivery of Ruling.

Court Assistant – Mercy

E. OBAGA

JUDGE

27.01.2022