



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC JUDICIAL REVIEW NO. 21 OF 2018**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW ORDERS FOR CERTIORARI**

**AND**

**IN THE MATTER OF ADJUDICATION SECTION NO. 2197, 3155 AND 230 RUIRI RWARERA ADJUDICATION SECTION**

**BETWEEN**

**STEPHEN MAKATHIMO.....EXPARTE APPLICANT**

**VERSUS**

**THE DISTRICT LAND ADJUDICATION & SETTLEMENT**

**OFFICER MERU CENTRAL .....1<sup>ST</sup> RESPONDENT**

**M'MURAA M'RINCHUNI represented by EDWIN KOOME**

**MURUGU.....INTERESTED PARTY**

**RULING**

1. The court is asked to review the judgment delivered on 18.11.2020 on the basis that the District Land Adjudication Officer Meru Central conducted the proceedings in English language which the exparte applicant did not understand, there was no interpreter and the District Land Adjudication and Settlement officer chased away the exparte applicants' key witness.
2. Secondly the court is asked to find the interested party and the 1<sup>st</sup> respondent did not reply to the application and hence it is only fair and just the same be allowed. In support of the application Stephen Makathimo has sworn an affidavit on 7.1.2021 where he explained he filed a notice of motion dated 13.6.2019 which was duly served upon the interested party and the respondent who did not respond to it but unfortunately the court did not consider that he had taken vacant possession of the land and built a permanent homestead.
3. He urges the court to consider the motion on merits and proceed to allow it.
4. Whereas the respondents were served with the application and an affidavit of service filed, none has at the making of this ruling objected to the application.
5. In written submissions dated 8.11.2021, the applicant states under **Order 45 of the Civil Procedure Rules** and **Section 80 of the Civil Procedure Act**, this court has powers to review the judgment. He relies on SOS -vs- CWRL & 4 others [2021] eKLR.
6. One of the reasons the notice of motion was dismissed was because the exparte applicant had not attached the proceedings he sought for quashing to the notice of motion in line with **Order 53 of the Civil Procedure Rules**. The court held the exparte applicant had failed to prove his notice of motion under **Sections 107 and 109 of the Evidence Act**.
7. For an applicant to be entitled to review of a judgment three are three key issues to prove:-

**a. Discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge or could not be procured and produced by him at the time when the decree was passed.**

**b. On account of mistake or error apparent on the face of the record.**

**c. Or for any other sufficient reason.**

8. The application is not brought within the confines of the above criteria. The applicant has not attached to this application, the impugned proceedings and or decision. The fact that the respondents and interested party did not participate in opposing the notice of motion cannot be new or important material which was not known to the applicant.

9. Further the applicant has not given any other sufficient reason which had the court known would not have reached the decision it made.

10. Looking at the application against the judgment made herein, the grounds cited are flimsy, misleading and totally out of line with the known grounds for review under **Order 45** and **Section 80 of the Civil procedure Act**. See **Republic –vs- Cabinet Secretary for Interior and Coordination of National Government Exparte Abdullahi Said Salad [2019] eKLR.**

11. In view of the foregoing the applicant has failed to discharge his duty why the court ought to review its earlier judgment. The application dated 7.1.2021 lacks merits and is bad in law. It is dismissed with costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26<sup>TH</sup> DAY OF**

**JANUARY, 2022**

**In presence of:**

Kendi for 1<sup>st</sup> respondent

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**