



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL CASES NOS. 3 AND 17 OF 2001

NANCY WANJERI.....PETITIONER

VERSUS

MICHAEL MUNGAI.....DEFENDANT

AND

HOUSING FINANCE COMPANY OF KENYA LIMITED.....1ST RESPONDENT

KENYA BUILDING SOCIETY LIMITED.....2ND RESPONDENT

TAIFA AUCTIONEERS.....3RD RESPONDENT

CHRISTOPHER AFISA.....4TH RESPONDENT

KENYA COMMERCIAL BANK LTD & OTHERS.....INTERESTED PARTIES

OTHERS.....ACCESSORIES TO THE CRIMES

RULING

1. **The** application I am called upon to determine is the Motion dated 23rd November 2015. It is founded on provisions of the Registered Land Act, Cap 300, Laws of Kenya, the Constitution of Kenya, the Land Title Act, Cap 282, Laws of Kenya, the Registration of Titles Act, Cap 281, Laws of Kenya, the Civil Procedure Act, Cap 21, Laws of Kenya, the Law Reform Act, the Miscellaneous Provisions Act, Cap 2, and all other enabling provisions of the law.

2. The principal order sought is for review or variation of orders made previously by Justices Aluoch, Rawal and others “so as to correspond with the current situations.” There is also a prayer seeking that the court rulings, directives, orders, notices, warnings, accounts and bills on record, that had been made against the Kenya Commercial Bank, the Housing Finance Company of Kenya /Kenya Building Society and others, be extended to the Central Bank of Kenya, the Capital Markets Authority, Housing Finance Company Limited, Housing Finance Group Limited; and, in the alternative, the court do order the Central Bank of Kenya and Capital Markets Authority to deregister and cancel the registrations and operating licences of Housing Finance Company Limited; and, Housing Finance Group Limited for being illegal and unlawful bodies.

3. The applicant would like Central Bank of Kenya, as the supervisor of the banks and financial institutions named in the application, to refund to the applicant the unauthorized charges (levied against him by the said institutions), withdrawals and excess payments that he made to the named institutions with regard to purchase of Nairobi Block 111/530, as well as for loss of use, enjoyment and earnings, and mesne profits. There is also a prayer against the Chief Land Registrar and the Chief Court Registrar to have them rectify certain records mentioned in the application. There are several other prayers against several other persons and entities named in the application.

4. The grounds upon which the application is predicated are detailed on the face of the application in twenty-one paragraphs. The facts are deposed in an affidavit sworn by the applicant on 23rd November 2015. The applicant has attached a huge bundle of documents to his affidavit to support his case.

5. Review is provided for under the Civil Procedure Rules, specifically at Order 45. It is notorious that review is sought and grantable under three general grounds – error apparent on the face of the record, discovery of new evidence or matter of significant importance that was not available to the parties at the time the decision sought to be reviewed was made, and any other sufficient reason.

6. Although the applicant indicated in the application that he wanted orders made previously to be reviewed or varied, he did not identify the specific orders or decrees that he sought the court to review. For the court to exercise its power to review its previous decisions there must be specificity as to the particular orders that the party wants the court to address its mind to. It is not enough to merely say that they would like review of orders without pointing at the particular orders.

7. The applicant did not attempt in the application, and in particular in the affidavit and the oral submissions, to bring the matter within the four corners of Order 45 of the Civil Procedure Rules, by demonstrating that there were errors on the face of the record with regard to the orders sought to be reviewed, that he had discovered new and important matters of evidence that he did not have as at the time the said orders were made, and that there is now sufficient reason for review of the alleged orders, which, in any event, he has not even identified. A basis for review therefore has not been laid.

8. Some of the orders sought are substantial and far reaching. For example, the orders sought against Central Bank of Kenya are for the said bank to pay unspecified sums of money to the applicant. Such orders, as crafted, are available only against a person who or entity that has been made a party to the proceedings. Central Bank of Kenya has not been made a party to the proceedings herein, and no proceedings of any kind have been conducted against Central Bank of Kenya which could provide background to the making of the orders sought against it.

9. Furthermore, the matter herein started as a suit for division of matrimonial property. It appears to have spanned out to cover matters that are not germane to division of matrimonial property, and to deal with issues that are way out of the jurisdiction of a family court seized of a matrimonial dispute. The suit has therefore spiraled out of control so much so that the court is now being invited to make orders that are not available for it to make in the context of the suit that was originally brought before it.

10. I will be forgiven for concluding that the application before me, complete with the supporting affidavit and its annexures, is lengthy, wordy and verbose, which ultimately makes it vague, nebulous and imprecise, and certainly no substantial orders can reasonably be made on it. It is, in my very humble view, misconceived, incompetent and, most certainly, an abuse of the court process.

11. The conclusion to be drawn from the above is that no basis exists for the making of the orders sought in the application dated 23rd November 2015. The application is for dismissal, and I do hereby, regrettably, dismiss the same. There shall be no order on costs.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF JULY, 2016.

W. MUSYOKA

JUDGE