



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 107 OF 2010

MAINGI MBINZU & 314 OTHERSPLAINTIFF

VERSUS

COUNTY COUNCIL OF KITUI 1ST DEFENDANT

SOUTH EASTERN UNIVERSITY COLLEGE ... 2ND DEFENDANT

RULING

1. The application dated 11th August 2014 principally seeks orders that this court do vary and or set aside the ruling and order given 25th September 2013.
2. It is stated in the supporting affidavit that there is an error apparent on the court record in that plot/land reference number the subject of the ruling is not reflected in the ruling. That the subject matter of the suit being land, the court had no jurisdiction to entertain the suit as the same ought to have been heard by the Environment and Land Court. It is further stated that the applicants prior to their eviction had settled in the land for over 15 years since the year 1998 having been settled there by the president Daniel Arap Moi and had built schools, clinics and even buried their people there. That the eviction has displaced them while the defendant's do not need the land and want to allocate the same to influential people and government officers.
3. The application is opposed. The 2nd Respondent, South Eastern University college filed a replying affidavit. It is deponed in the said affidavit that the applicants have already been evicted from the suit property. That the applicant submitted to this courts jurisdiction. It is further stated that the applicants have no identifiable interest in the suit property as the alledged presidential direction was dismissed in the ruling herein dated 13th October 2011 which ruling was not appealed from. That the applicants did not appeal against the order of eviction and therefore the application has no basis. The 2nd Respondent has contended that he application herein has been brought after inordinate and the inexcusable delay of eleven months.
4. The 1st respondent who was sued as the County Council of Kitui, did not participate in this application and in the entire suit.
5. The application was canvassed by way of written submissions while I have duly considered.
6. Order 45 Rule CPR 2010 provides as follows;

Under **Order 45(1)** of the **Civil Procedure Rules** –

(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed,

And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review or judgment to the court which passed the decree or made the order without unreasonable delay.”

7. On whether there is an apparent error on the face of the record in respect of the question of jurisdiction and whether the ruling appeared like one for a summary judgement, the court considered the matters in question and made a decision. If this court turns around and makes a decision either confirming the said ruling or otherwise, this would be tantamount to sitting on appeal on my own decision.

8. As stated by the Court of Appeal in the case

In Nancy Wanjeri & 5 others –vs- Micheal Mungai (2014)eKLR while replying on the Court of Appeal in National Bank of Kenya Limited –vs- Njau (1996) LLR (CAK);

“A review may be granted wherever 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 not require an elaborate argument to be established. It will not be a sufficient ground of review that another judge could have taken a different view of the matter. Nor can it be a ground of 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. In the instant case the matters in dispute had been fully canvassed before the learned judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the defendant. If he had reached a wrong conclusion in law, it could be a good ground for appeal but not for review. Otherwise, we agree, that the learned judge would be sitting in appeal on his judgment, which is not permissible in law”.

9. On the issue of the land reference number not having been reflected in the ruling in question, I note that the ruling refers to the suit land. The same is reflected in the plaint as Land title No. LR 13629 at Kwa Vonza location in Kitui District.

10. With the foregoing, I find no merits in the application and dismiss the same with costs.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 15th day of December, 2015

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B. THURANIRA JADEN

JUDGE