



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL SUIT NO.30 OF 2006

EVALINE K. CHUMO.....PLAINTIFF/RESPONDENT

VERSUS

ZAMARIA ROGITO.....1ST DEFENDANT

SARAH ROGITO.....2ND DEFENDANT

AND

DAVID LANGATINTENDED INTERESTED PARTY

RULING

1. This ruling is on an application made by the defendants by way of notice of motion dated **26th September, 2013** under **order 10 Rule 11, order 22 Rule 22, order 45 Rule 1, order 51 Rule 1** of the **Civil Procedure Rules** and **Section 3 A** of the **Civil Procedure Act** seeking among other orders that;
 - i. Pending the hearing and determination of this application inter parties this court be pleased to stay the eviction of the applicants from **L.R Kericho/ Kipsonoi Plot NO. 259**
 - ii. That the honourable court be pleased to set aside, review and or/ alter summons judgement and that the applicant be allowed to adduce evidence
 - iii. costs
2. The application is based on the following grounds: (which are also laid out in the supporting affidavit of the 1st applicant dated **29th September 2013**) that:
 - i. The respondent has 45 days to evict the applicants from the subject land herein.
 - ii. The applicants have no other home or land elsewhere
 - iii. The applicant and one David Langat have been negotiating with one Noel Edward Joshi who is a beneficiary of the subject land vide Nairobi HC Succession Cause No. 1812 Of 2006: the deceased had willed the land to his children.
 - iv. The subject land to date is in the name of the deceased one Jimmy Joshi Ramdas
 - v. The respondent herein is not a beneficiary of the subject and the annexed affidavit of one Zamy Rogito
3. This application was filed following a ruling delivered on **24th September, 2013** for a chamber summons application dated **2nd April, 2012** which was dismissed with costs and an eviction order granted to be executed within 45 days. The current application was urged before me on **27th**

November, 2013.

4. Before filing the chamber summons application **dated 2nd April, 2012** summary judgement had been entered in this matter on **22nd March, 2007** and an order issued that the defendants (applicants in the instant application) be evicted within 45 days. The defendants never appealed against this ruling.
5. The defendants in this case seem to have refused to accept their fate. They are using every technicality they know, to delay execution of the eviction orders. This court has ruled twice that there is no issue pending for determination. They have now chosen to apply for review of the summary Judgement.
6. For one to succeed in an application for review under **order 45 rule 1** one must satisfy the following conditions;
 - a. **The person must have made 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,**
 - b. **or there was some mistake or error apparent on the face of the record,**
 - c. **or there is a sufficient reason and**
 - d. **it is made without unreasonable delay.**
7. In the instant application the applicants have not stated what new information has come to their knowledge. It is important to remind the applicants that by the time their father and husband, Kiptonoi Arap Rogito died, the suit property did not form part of his estate as described under section 3(1) of the Law of **Succession Act Cap 160** where “**estate**” is defined to mean the “**free property of a deceased person**”. The deceased had charged the suit property to the bank and when he failed to repay the loan he had borrowed, the suit property was sold in a public auction. There was therefore no free title for the deceased to pass on to his beneficiaries. All this is clear from both the summary judgement **dated 22nd March, 2007** and my ruling dated **24th September, 2013**. The applicants never appealed against the ruling of Kimaru J within the stipulated period and can also not succeed under their application for review. In my view they have not introduced any new and important evidence and the time within which the application has been brought cannot be said to be "without unreasonable delay"
8. As observed in my earlier ruling while considering such applications the court should always be guided by the overriding objective of the Courts as outlined in **Section 1A and 1B** of the **Civil procedure Act**. The overriding objective of the court is to do justice, and to do so, it must get to the root of the matter, and technicalities cannot be used to derail the process of the court.
9. **Section 3A** of the **Civil Procedure Act** grants the court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. I find that this is an unworthy application for further consideration. It is unmeritorious and is an example of the abuse of the court process. The process of court must be protected from such abusers and predators.
10. The application dated **26th September, 2013** is therefore dismissed under **Order 45 Rule 3(1)** of the **Civil Procedure Rules, 2010** with costs to the respondents.

Dated and delivered at Kericho this 29th day of January 2014

L N WAITHAKA

JUDGE

PRESENT

Mr. Langat holding brief for Mr. Waambeyi for Plaintiff/Respondent

No Appearance for the Defendant/Applicant

C/C Josphine Koech.

L N WAITHAKA

JUDGE