



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 529 OF 2013

PETER K. GITHAIGA & ANOTHERPLAINTIFF/APPLICANT
BETTY RASHID.....DEFENDANT/APPLICANT

RULING:

The matter coming up for determination before me is the Plaintiffs/Applicants' Notice of Motion dated 28th October, 2013, brought under **Section 1A of the Civil Procedure Act, Order 45, Rule 1 of the Civil Procedure Rules, 2010** and all other enabling provisions of the law, seeking for the following Orders.

1. *That the Honourable Court be pleased to review its Ruling delivered on 8th October, 2013.*
2. *That the Honourable court be pleased to grant the Plaintiffs' prayer No.4 of the application dated 7th May, 2013.*
3. *That cost of the application be provided for.*

The application was premised on the following grounds.

- a. *That the Document Examiner's Report cannot be discovered as it is not in possession of the plaintiffs.*
- b. *That the Document Examiner's report cannot be released by the Director, CID who has the custody thereof except with the Order of this Honourable Court.*
- c. *That it is in line with overriding objective of this Honourable court to facilitate the just, expeditious, proportionate and affordable resolution of this dispute that each party should be allowed to seek and adduce as much evidence as possible in support of its case.*
- d. *That the said prayer is not opposed by the Respondent in her Replying Affidavit sworn on 17th May, 2013 or her submissions dated 10th June, 2013.*

The application was also supported by the Affidavit of **Peter Kirika Githanga**, who averred that the Document Examiner's Report makes a thorough forensic audit of how the Respondent procured her purported documents of Title by the proper agency of government and therefore it is at the heart of the issues for determination by this court and it is in the interest of justice that the Court do access that document.

The application was opposed by the Defendant/Respondent herein. She averred that the order to be reviewed is not attached to the application and that the applicant does not meet the requirements provided

by Order 45 Rule 1. The Respondent further averred that the application is misconceived, frivolous and an abuse of the Court process. She further deponed that the prayer sought is an abuse of the court process as the persons sought to be compelled to produce a document are not part of this suit. The Respondent asked the court to dismiss the applicants' application.

The parties herein filed their written Submissions which I have considered. I have also considered the pleadings generally and the relevant laws and I make the following findings.

The application is premised under **Section 1A of the Civil Procedure Act** which deals with the overriding objective of the Act, which is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act. The application is also brought under **Order 45 Rule 1 of the Civil Procedure Rules** which provides that an Order for review can be entertained when there is 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 order made.

The applicants herein seek to review this court's Ruling that was delivered on 8/10/2013. The Order to be reviewed is not attached to the application. In the case of **Evans Bwire Vs Andrew Ngida, Kisumu High Court, Civil Appeal No.103 of 2000**, the court held that:-

“an application for review cannot be entertained if the Order sought to be reviewed has not been extracted.”

The applicants herein have not extracted the order they are seeking to review and attached it to the instant application. **Order 45 Rule 1** of the **Civil Procedure Rules** applies where there are discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge or could not be produced by the applicant at the time the order was made. I am guided by the case of **Daniel Macharia Karagacha Vs Monicah Watithi Mwangi, Civil Appeal No.159 of 2000** where the Court of Appeal held that :-

“Review is only available where there is an error of law apparent on the face of the record or there is a discovery of new and important matter of evidence which the applicant could not by exercise of due diligence have placed in his pleadings or before the Judge when he heard the earlier application”.

In the instant application, the applicants have not shown this court that there is error of law apparent on the face of record. There is no discovery of new or important matter of evidence that applicants could not have placed before me during the hearing of the **Notice of Motion dated 28th October, 2013**. The court considered the Notice of Motion in issue and specifically prayer No.4 which is being sought now. The court gave reasons why it would not grant the same. By bringing this application for review and asking the court to grant that prayer that was disallowed, is tantamount to asking this court to sit on its own appeal.

The applicants herein have not shown that there has been discovery of new and important matter of evidence or error apparent on the face of record or any other sufficient reasons to warrant a review of the Court's Ruling of 8/10/2013.

Consequently, I find the applicants' application dated 28/10/2013 is not merited. The same is dismissed entirely with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered this 21st day of **March, 2014**

L. GACHERU

JUDGE

In the Presence of:-

..... For the Plaintiff

.....For the Defendant

Lukas: Court Clerk

L. GACHERU

JUDGE