

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAROK

ELC MISC NO. 2 OF 2018

SAMWEL NAIMODU LETEIPA.....APPLICANT

-VERSUS-

JOSEPH LEKISHON KAELO....RESPONDENT

RULING

1. The appellant/applicant heard by a Notice of Motion dated 9/4/2019 brought under order 1A, B 63 (e) and Section 80 of the Civil Procedure Act sought for an order of stay of execution of the orders made on 29/10/2014 and further orders to Review and set aside the order dismissing the appellant's application dated 29/10/2014. The application is based on the grounds that there is an error appeared on the record since the parties were to await the outcome of the application dated 29/10/2014.

2. The application was supported by the affidavit in application in which states that in his Notice of motion dated 29/10/2014 he was seeking leave of the Honourable court to lodge an Appeal out of time against a Decree that was issued in Narok CMCC No. 181 of 2007 and further that the respondent has filed an application seeking the dismissal of the Notice of motion dated 29/10/2014 however, the court dismissed the said application and he thus file the instant application to have the order of dismissal Revised and set aside.

3. The application was opposed by the respondent by way of a replying affidavit. The respondent deponed that the application dated 29/10/2014 and that of 9/4/2019 were both dismissed and that the applicant have not demonstrated that they are willing to deposit the decretal sum of kshs. 1,185,125 and that the instant application is only meant to obstruct the respondent from enjoying the fruits of his Judgment.

4. I have considered the application and the replying affidavit opposing to the same and the respondent's submissions, this being an application for Review of the orders of the court, the ground upon which such an order can be made is not settled a party must show that there is an error apparent on the face of the record. The applicant contended that the error that is apparent in that the court delivered a Ruling dismissing his application whereas it was to wait for the outcome of the Notice of motion dated 29/10/2014. I have perused the record and I find that no such direction were given by the court. In any event the applicant application was filed on 29/10/2014 and since the court felt there was an inordinate delay in the procedure of the said application. The same was dismissed for want of prosecution and I thus, find that the applicant has not demonstrated the need to review the orders in the ruling delivered on 14/2/2019 and the upshot of the above is that the instant application is unmerited and the same is hereby dismissed with costs.

DELIVERED SIGNED AND DATED AT MIGORI THIS 16TH DAY OF MARCH 2022 VIA EMAIL.

MOHAMED N. KULLOW

JUDGE