

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC.CIVIL APPLICATION NO. 160 OF 2011

JOHN NDUNGU MBACHIOPLAINTIFF

VERSUS

MUSA NJUGUNA & NJERI MWIKAMBA.....RESPONDENT

R U L I N G

1. Before me is the application dated 11th June 2013. The application is brought under section 80 (a) of the Civil Procedure Act and Order 45 rule 2(1) of the Civil Procedure Rules, Cap 21 Laws of Kenya and Article 159 (d) of the Constitution. The applicant seeks to have this Court review its ruling delivered on the 21st May 2013 due to an error apparent on the face of the record and secondly that after doing so this Court to set aside/vary its ruling delivered on the 21st May 2013 and to allow the application dated 14th June 2012.
2. The application is supported by 3 grounds stated on the face of the application together with a supporting affidavit of Mr.Mungao Rachier an Advocate of the High Court who is seized with the conduct of the matter. Counsel's main issue in the application is that when I wrote the ruling delivered on the 21st May 2013. I omitted to consider the affidavit service confirming that the respondents were duly served and that because of the said admission, I dismissed the application dated 14/6/2012. He argues that there was an error on the face of the record when I did not take into consideration the entire record as presented; that as a result the applicant has suffered loss and damage.
3. The application was not opposed. The respondents though served did not attend the hearing of the application. I have read my ruling dated the 21st May 2013. In my ruling I noted that the order that accompanied the application had no penal notice and I was persuaded that the order attached to the application was not the one served on the applicant. I went on further to state that the fonts of the penal notice were different to the one in the main order. My ruling clearly shows that I carefully considered and addressed the orders that were before me. I even made my finding on each issue. It is therefore not correct to state that it was an omission on my part. I looked at all the affidavits attached. There is no error apparent on the face of the record. The applicant has not even attached the affidavit of service he states I did not consider. The loss and damage too is not explained. I find no merit in the application and dismiss it with no merit in the application and dismiss the application with no orders as to costs.

Orders accordingly.

Dated, signed and delivered this 23rd day of *June* 2014

R.E. OUGO

JUDGE

In the Presence of:-

.....For the Applicant

.....For the Respondent

..... Court Clerk