

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

ENVIRONMENT AND LAND CASE NO. 13 OF 2014

[FORMERLY HCC NO. 110 OF 2012]

BENJAMIN WAFULA BARASA PLAINTIFF

VERSUS

PUBLIC HEALTH OFFICER & 23 OTHERS..... DEFENDANTS

RULING

1. The Applicant has asked the court to consider his application dated 18th December 2012 and grant the orders sought. The application is brought under section 81, Order 45, order 2, 3,4,10,51 and 40. He did not say of which act but this court will presume that the orders are derived from the Civil Procedure Rules. The application seeks to review the ruling delivered by this court on 17th December 2012. It has listed seven prayers and several grounds to support the prayers. It is also supported by an affidavit sworn by the plaintiff/applicant.

2. The application is thoroughly convoluted as it is seeking both review and injunction at the same time. The reasons for granting review are provided under Order 45 where any person being aggrieved on.

i. Discovery of new and important matter/evidence.

ii. Account of some mistake or error apparent on the face of the record.

iii. For any sufficient reason may apply for review of the judgment or order to the court which passed it.

3. The applicant has failed to satisfy all the above three grounds for seeking review. He has not explained any reason the error or discovery of new issues. The applicant in prayer no. 7 asked the court to issue an order directed at the 18th defendant stopping him from interfering with the suit no. HCC 110 of 2012 boundary dispute evidence till it is heard and ruled. He has not told the court the manner or nature of interference by the 18th Defendant. Before an order of injunction is issued, the party seeking it must prove any of the three principals laid down under order 40 and in the renowned case of Giella Vs. Cassman Brown. The applicant has not made the slightest attempt to do so.

4. Consequently I find this application as lacking in merit and dismiss it with no order on costs.

DATED AND DELIVERED in Bungoma this 30th day of October 2014.

A. OMOLLO

JUDGE