

REPUBLIC OF KENYA

High Court at Embu

Civil Appeal 99 of 2010

(Being an appeal from the Ruling of D.A. OCHARO Resident Magistrate Wanguru

delivered on 9th September 2010 in Civil Case No. 150 of 2008)

JAMES MUTHII NJOGU.....APPELLANT

VERSUS

FRANCIS MUYA NJOGU.....RESPONDENT

R U L I N G

The Applicant has filed the application dated 20th April 2012 for Review under Section 80 of the Civil Procedure Act, Order 45 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules. He is asking this court to review it and set aside its judgment delivered on 15/3/2012 and in its place dismiss the appeal. The grounds are that it has been discovered that the Rice holding No.2342 belongs to Makui Mbiu Njogu.

He has also raised an issue on payment of costs. He filed a supporting affidavit. The respondent filed a replying affidavit opposing the application saying no new matters had been discovered.

I will not delve so much into the issue of new discoveries by the Applicant. It is very clear that the reason why the appeal herein was allowed was that the appellant was denied a chance to be heard and a judgment delivered in the lower Court.

This court did not get into the arena of evaluating the evidence in order to deal with merits or otherwise of the appeal. I would therefore not wish to delve into the area of who owns which Rice holding and so on. I did not make any finding on ownership of the alleged rice holding. Had the respondent been given an opportunity to be heard, it would have clearly come out and a decision made on merit. And that being the case, I would advise the applicant to have the new fact discovered placed before the trial court for consideration.

However, on the issue of costs, I agree that the trial court is the one that erred in denying the Applicant an opportunity to be heard. I therefore review the order on costs and set it aside.

I order that each party bears his own costs of the appeal. The same order applies to this application.

DELIVERED, SIGNED AND DATED AT EMBU THIS 20TH DAY OF FEBRUARY 2013.

H.I. ONG'UDI

JUDGE

In the presence of:-

Ms. Ndorongo for applicant

Njue CC