



REPUBLIC OF KENYA

High Court at Mombasa

Civil Appeal 130 of 2012

SALEH AWADH SALIM (as administrator of the estate of the late

HASSAN AWADH.....APPELLANT

VERSUS

1. ABDALLA SAID BAKARAT

2. BARAKAT SAID BARAKAT.....RESPONDENTS

RULING

By this notice of motion dated 9th November, 2012 the applicant prays *inter alia*,

“2. THAT this Honourable court be pleased to review its ruling/order of 18th November, 2012 herein”.

The application was supported by the affidavit of the applicant sworn on 9th November, 2012.

The application was disposed of by way of written submissions. The order/ruling which is sought to be reviewed is the one delivered by **Hon. Justice Mwera** on 18th October, 2012.

As a general rule a ruling of a court may be reviewed and/or set aside on two main grounds:

- (1) Error apparent on the face of the record.
- (2) Discovery of new evidence.

The applicant on his submissions argues that the fact that he has continued to pay and the respondents have continued to receive rent means that a Landlord/Tenant relationship exists between the two. This is despite the existence of orders given by the Business Premises Rent tribunal entitling the respondents to evict the applicant. Surely the applicant could not have expected to stay in the premises '*gratis*'. Having obtained orders from the Business Premises Rent Tribunal and there being no stay and/or successful appeal, the respondents retains the right to execute the same at any time. I have read the ruling of **Hon. Justice Mwera** in which he dismissed the applicant's prayer for a temporary stay pending appeal. Having failed to get orders of stay pending appeal the applicant is trying to use this application to obtain similar orders from this court. This amounts to an abuse of court process which this court will not entertain. No basis has been laid for a review and none is merited.

I hereby dismiss this application in its entirety and award the costs to the respondents.

Dated and delivered in Mombasa this 29th day of April, 2013

**M. ODERO
JUDGE**

In the presence of:
No appearance by Applicant
Mr. Omwenga for Respondents
Court Clerk Mutisya