



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT & LAND DIVISION

ELC NO.11 OF 2013

ABDULLAHI M ADAN & 5 OTHERS.....APPLICANT/DEFENDANT

VERSUS

RASHID ROBA ADAN..... RESPONDENT/PLAINTIFF

RULING:

This is a Notice of Motion dated 29th April, 2013 brought by **Jaoko Alexander Advocate**, brought under **Section 1A, 1B, & 3 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules** and all the enabling provisions of the Law.

The applicant has sought for these Orders, that the Court be pleased to review its orders made on 11th April, 2013 and in place thereof make an Order directing that the Notice of Motion Application dated 8th April, 2013 and filed on 11th April, 2013 be heard immediately on priority basis; that the Court do review its Orders made on 11th April, 2013 and in place thereof make an Order granting the Defendants/Applicants prayer No.2 on the Notice of Motion dated 8th April, 2013 and for costs of the application. The Applicant relied on the grounds on the face of the application and on the Supporting Affidavit of **Jaoko Alexander (Advocate)**.

The application was opposed. The parties canvassed the application orally in Court. The application is hinged on Order 45 which Order reads as follows:-

“Any person considering himself aggrieved by a Decree or Orderand who from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the Decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons, desires to obtain review of the Decree or Order, may apply for a review of Judgement to the Court which passed the Decree or made the Order without unreasonable delay”.

The applicant herein, filed this miscellaneous application No. 11 of 2013 on 11th April, 2013 and sought for restraining Order pending the hearing and determination of the application inter-partes. The applicant did not seek for Stay of Execution pending Appeal. The said miscellaneous application was brought to Court in its original jurisdiction but not as an appellate Court. That is the reason why the Court ordered the applicant to seek stay of execution in the Magistrate Court. In the said miscellaneous application, the applicant had not even attached the Notice of Appeal.

The Court will concur with the Counsel for the Respondent that, there is no error apparent on the face of

record to warrant review of the orders issued on 11/4/2013 by this Court.

If applicant has filed an appeal, then he can file an application for stay of execution in the said case. The prayer sought in miscellaneous application No. 11/2013, are restraining Orders and not stay of execution.

The Court finds that, there is no discovery of new and important matter or evidence herein to warrant this Court review its Orders of 11/4/2013. The applicant should instead file an application for Stay of Execution in Civil Appeal No. 189 of 2013, or before the same Magistrates Court.

The Court dismisses the Applicant's application dated 29th April, 2013 with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi this 19th day of **July, 2013.**

L .N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff

.....For the Defendant/Applicant

Anne: Court Clerk

L .N. GACHERU

JUDGE