



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CIVIL SUIT NO. 12 OF 2009**

**TIMOTHY INGOSI AND 87 OTHERS.....PLAINTIFFS**

**VERSUS**

**KENYA FORESTRY RESERVE**

**HON. ATTORNEY GENERAL .....RESPONDENTS**

**COMMISSIONER FOR LANDS**

**RULING**

This application came up by way of Notice of Motion dated the 2<sup>nd</sup> February, 2012 under Section 3A of the Civil Procedure Rules and Order 50 Rules (1) and (16) of the Civil Procedure Rules.

The Applicant's prayer was that the court interprets and harmonizes the Order for "Status Quo" issued on the 20<sup>th</sup> March, 2010 and the injunctive orders granted on the 23<sup>rd</sup> Jan, 2012. Both Orders were granted pending the hearing and final determination of the suit.

The Applicant deponed that the two orders were causing a problem on the ground as the Forestry Guards had stopped the Applicant and his co-Applicants from cultivating the land.

The Applicant submitted that the application was meritorious and was not res-judicata nor was it an abuse of the due process of the court.

He prayed that court exercises its unfettered discretion under Section 3A and interpret and define the scope of the orders.

The application was opposed by Counsel for the 1<sup>st</sup> Respondent and Counsel for both the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.

Counsel for the 1<sup>st</sup> Respondent submitted that the application was res-judicata and that the court could not re-visit the same issue. That the application lacked merit and should be dismissed with costs.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent submitted that the Order of 21<sup>st</sup> Jan 2012 was very explicit. That the proper forum was for the Applicant to either appeal against the said orders or apply to have the same reviewed.

The method adopted by the Applicant was therefore an abuse of due process of the court.

Their prayer was that the court should decline to give an order for interpretation and dismiss the application.

After hearing all the Counsels for the Applicant and Respondents, I find that the issues for determination are as follows:

- i) The exercise of the courts discretion.
- ii) Interpretation of the two orders.
- iii) Costs.

On the issue of interpretation I am inclined to agree with Counsel for the Respondent that the proper forum would be for the Applicant to either appeal or invoke the provisions of Order 45 of the Civil Procedure Rules.

Order 45 Rule 1(b) provides for review as follows;

***“.....on account of some mistake or error apparent on the face of the record, or for any sufficient reasons, desires to obtain a review of the decree or order.....” (Emphasis)***

Upon invoking the said provisions the court is then entitled to exercise its discretion.

The court also has wide powers in exercising its discretion in cases where there is prejudice or injustice but there must be sufficient evidence showing such prejudice or injustice.

I find that this is not a proper case for this court to exercise its discretion as no evidence has been brought by the Applicant in support of any prejudice or injustice suffered.

I find the application lacking in merit and the same is dismissed. Costs shall be in the cause.

**DATED AND DELIVERED AT ELDORET THIS 15<sup>TH</sup> DAY OF March 2012.**

**A.MSHILA  
JUDGE**