



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Suit 275 of 2007

ANNAH CHEBET SITIENEL.....1ST APPLICANT
KOSITANY CHERUIYOT JOSHUA.....2ND APPLICANT

VERSUS

CHELULE A. LASOI.....1ST RESPONDENT
JOSEPH KIPKURUI LANGAT.....2ND RESPONDENT
DAVID KIPKEMOI TUEL.....3RD RESPONDENT
JOHN KIBET LANGAT.....4TH RESPONDENT
JULIUS KIPKOECH CHELULE.....5TH RESPONDENT
MONICA CHESANG.....6TH RESPONDENT
NAOMI CHEPKURUI.....7TH RESPONDENT
MERCY CHEPKOECH LANGAT.....8TH RESPONDENT
JOYCE CHEPKIRUI TUEL.....9TH RESPONDENT

RULING

Simultaneously with the originating summons, the respondents brought the instant chamber summons seeking *inter alia* restraining orders against the applicants in respect of parcel No. NAROK/CIS/MARA/OLOLOLUNGA/1400, (the suit land) which the respondents claim by way of adverse possession.

On 14th February, 2008, the court (Koome, J) granted an injunction restraining the applicants from evicting or disturbing the respondents, selling or alienating the suit land until the suit is heard and determined. It is that order that has aggrieved the applicants who now seek, in the present application dated 17th July, 2009 that those orders be reviewed and set aside. The application is premised on the grounds that the applicants were served with a hearing notice which indicated the hearing date as 17th February, 2007 yet the application had been set down for hearing on 14th February, 2008. That due to this mix-up on the dates, the applicants were denied a chance to oppose the application and to indicate to the court the true position on the suit land, namely, that the respondents are not in occupation of the same.

In reply, the respondents argued that the hearing notice was clear on the date; that it has taken the applicants nearly one year to challenge the orders, yet they have all along been aware of the same.

I have considered these arguments. The application, as I have stated, is for review and setting aside of the injunctive orders. It is brought pursuant to **Order 44 and 50 rule 1**. Of relevance, is order **44 rule 1(1)** of the **Civil Procedure Rules** which provides, *inter alia*, that any person aggrieved by an order may apply for a review of the same on the following grounds:

- i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant, or could not be produced by him at the time when the decree was passed or the order made, or
- ii) on account of some mistake or error apparent on the face of the record, or
- iii) for any other sufficient reason.

It is also a requirement that an application for review be brought without unreasonable delay. At paragraph K of the grounds on the motion, it is averred that there is some mistake or error apparent on the face of the record. Counsel for the applicants did however, submit that he was relying on all the grounds for review. Starting with the first ground, namely, discovery of a new and important matter or evidence, the applicants have not specified which new evidence they have come by.

The applicants do not dispute that they were served. Their only contention is that the date reflected on the face of the chamber summons was different from the date the application came upon for *inter partes* hearing. I have looked closely at the date in question and I

have no difficulty in discerning that it is clearly 14th February, 2007. The only problem with this date is the year - 2007 instead of 2008, and not the date. The applicants have conceded that they were served on 15th December, 2007.

Upon being served with a belated hearing notice and if they were diligent, they ought to have been curious to confirm with the court. If they did so, it would have become clear that the matter was coming up later on and they would have had a chance to oppose the application. The confusion regarding the date cannot constitute a discovery of a new and important matter. Is there a mistake or an error on the face of the record? None has been pointed out to the court. It cannot, of course, be the hearing date. I am also unable to find any justification for my exercising my discretion to review the orders under the rubric "*for any other sufficient reason.*" The remedy of setting aside is similarly not available for the same reason.

The orders in question were issued on 14th February, 2008 and this application filed on 23rd July, 2009 – a delay of nearly one year that has not been explained.

For these reasons, this application must fail and I do not wish to address the other technical issues raised as they do not go to the merit of the application.

The application is dismissed with costs.

Dated, Signed and Delivered at Nakuru this 30th day of April, 2010.

W. OUKO
JUDGE