



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 280 of 1997

EDWARD MACHI MITEI.....APPLICANT/PLAINTIFF

VERSUS

JOHN M. KILEGES.....1ST RESPONDENT/DEFENDANT

JOHN GACHANJA MBURU.....2ND RESPONDENT/DEFENDANT

NAKURU DISTRICT LAND REGISTRAR.....3RD RESPONDENT/DEFENDANT

RULING

The plaintiff filed an application seeking mainly a review of this court's judgment that was delivered on 31st March 2006. He also prayed that the said judgment be set aside.

The application was made on the grounds that:-

- (a) The plaintiff was aggrieved by the said judgment.
- (b) New and important matters or evidence had come up after delivery of the said judgment. The new evidence was not within the knowledge of the plaintiff and could not therefore be produced.
- (c) There was an error apparent on the face of the record which required correction.
- (d) Relevant statutory requirements were not considered when the court was giving its judgment.

In his brief affidavit in support of the said application, the plaintiff deposed that he had been informed by his new advocates that there was an apparent error on the face of the record that needed correction. He was also advised that relevant statutory requirements had not been considered by the court when it was giving the judgment. The plaintiff further deposed that he had since the delivery of the judgment discovered new and important evidence. He annexed a copy of Land register for the suit premises, **NAKURU/OLENGURUONE/AMALO/163**. He stated that Biatah Wambui Kamuga (deceased), was not the first registered owner of the suit premises as her name did not appear in the copy of the Land Register.

Mr. Ochieng Gai, advocate for the first and second respondents filed a replying affidavit on behalf of his clients. He stated that the plaintiff's application did not fall within the ambit of a review. He further stated that there was unreasonable delay in filing the application which he saw as having been filed in bad

faith. In his view, the application was tantamount to asking the court to sit on appeal over its own judgment. He stated that there was no new evidence that had been brought by the plaintiff.

During the hearing of the application, Mr. Gai did not attend court although the hearing date had been fixed in his presence. The plaintiff filed a further affidavit in response to some issues that were stated in Mr. Gai's affidavit and Mr. Siele also referred the court to his client's further affidavit.

Mr. Siele urged the court to strike out Mr. Gai's affidavit, saying that he had deposed to contentious issues. In arguing that the plaintiff had come by new evidence which was not in his possession at the time of the hearing, the plaintiff's advocate referred to a copy of the extract of the Land Register (Green Card) that had been annexed to the plaintiff's affidavit. He also referred the court to the copy of the identify card of Biatah Wambui Kamuga and her Death Certificate. However, all the above documents were not new at all. They were all there at the time of the hearing and the court's attention was drawn to them. The court even made reference to the said documents in its judgment. Whether its appreciation or analysis of those documents was wrong or not cannot be a ground for an application for review of the judgement, it can only be a ground of an appeal. In **NATIONAL BANK OF KENYA LTD VS NDUNGU NJAU, Civil Appeal No. 211 of 1996 (unreported)** the Court of Appeal had this to say on the question of review:-

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should require no elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

Applying the aforesaid principles, I do not think that there is anything that warrants a review of this court's judgment. The alleged error on the face of the record is not clear to me. It relates to the aforesaid documents and in my view, if the plaintiff is convinced about the same, he can exercise his constitutional right of appeal as I cannot sit on appeal of my own judgment.

I therefore dismiss the plaintiff's application but with no order as to costs since the defendants' counsel did not attend court for the hearing of the application.

DATED at Nakuru this 20th day of December, 2006.

D. MUSINGA

JUDGE

Ruling delivered in open court in the presence of Mr. Tele holding brief for the appellant and Mr. Murimi holding brief for Mr. Gai for the respondent.

D. MUSINGA

JUDGE