

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 439 of 2004

JOSEPH KAMAU GATERI.....PLAINTIFF/ APPLICANT

VERSUS

NAIROBI CITY COUNCIL.....1ST DEFENDANT/ RESPONDENT

GATERU MUTUANGUARE CO. LTD.....2ND DEFENDANT/ REPENDENT

RULING

This application of the 12/8/2004 is to review my ruling of the 28/7/2004 on the ground of the discovery of new and important matters and evidence which after the exercise of due diligence was not within the Applicant's knowledge. The ruling referred to, dismissed an application by the Applicant herein for an injunction to restrain the Respondent from selling, transferring or dealing with the suit premises. The reason for the dismissal was that on the evidence before me the Applicant had not shown that he had applied for a renewal of the lease of the suit premises which had expired.

I notice that the Applicant has not extracted a decree or order from my Ruling, which is fatal to this application. (See Jiranji Vs Jiranji 1929/30 KLR Vol 12 p 44 and Matahe Farmers Co. Vs N Farmers Co. Ltd HCCC No. 32 of 1974) Leaving aside the question of whether there was a decree or order extracted, the documents annexed to the present application were all in existence and available prior to the application of the 30 April 2004 for the injunction. I cannot see that the Applicant has shown that there is any new evidence which with due diligence could not have been produced in the first instance.

It seems to me that the Applicant's remedy is to appeal my ruling and seek a stay in the Court of Appeal. I am not in a position to assist the Applicant further and have no alternative, for the reasons given, but to dismiss the application with costs to the Respondents.

DATED and DELIVERED at NAIROBI on the 20th day of January 2005

P. J RANSLEY

JUDGE