

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 159 of 1997

MARGARET WANGIRI MUNGAI 1ST PLAINTIFF

MICHAEL MUNAI MUNGAI 2ND PLAINTIFF

VERSUS

JOSEPH CHEGE MUNGAI DEFENDANT

RULING

On 23rd May, 2005 this court entered Judgment for the defendant in his counter claim that he was the registered proprietor of *Naivasha/Maraigushu Block 4/998 and Naivasha/Maraigushu Block 4/1129*, having dismissed the plaintiffs' claims over the said parcels of land.

On 7th June, 2005 the second plaintiff filed an application dated 6th June, 2005 brought under order IXB Rule 8, XXI Rule 22, XXXIX Rules 1, 2, 3 and 9 and Section 3 of the Civil Procedure Act praying for inter alia, stay of the aforesaid judgment and or setting aside of the same.

In the said judgment, the plaintiffs were ordered to vacate the aforesaid properties within 14 days from the date of the judgment Failing which the defendant was to be at liberty to have them evicted therefrom.

The plaintiffs were formerly represented by Mr. Muhia Advocate but on the 7th June, 2005 the second plaintiff filed a notice of intention to act in person. Perhaps he should have been advised to engage another Advocate instead of acting in person. I say so because the present application is grossly incompetent that it cannot be entertained at all.

Review of judgments can only be entertained under Order XLIV where there has been discovery of new and important matters or evidence which, after the exercise of due diligence, was not within an applicant's knowledge or could not have been produced by him at the time when the decree was passed or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

The applicant herein blamed the defendant for having destroyed their property thus causing them to suffer considerable loss. The defendant denied that and said that on 13th June, 2005 he took possession of his two properties by removing all the fixtures belonging to the applicants/plaintiffs. This is not an issue which should be dealt with in an application for review.

The second plaintiff also raised several other issues with which he was satisfied with in so far as the said judgment was concerned. This court cannot sit on appeal of its own judgment. The plaintiffs have a constitutional right of appeal against this court's judgment and they should consider exercising the same if they were aggrieved by this court's finding on the matter. The application as presented is grossly incompetent and I dismiss the same with costs to the defendant.

DATED, SIGNED & DELIVERED at Nakuru this 26th Day of July, 2005.

D. MUSINGA

JUDGE

26/7/2005