



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 122 of 2003**

TAHIYA ABDALLA ISSA
...PLAINTIFF

VERSUS

ALI ALWI ABDALLA BWANA ADI ISSA ALI

HEIDI ERNST LUSENO
DEFENDANTS

R U L I N G

Notice of Motion dated 22/6/05 seeks for a review of restraining orders made on 13/10/2004 commanding 2nd and 3rd defendants to demolish the wall erected on plot No. Lamu/Block1/930 together with order for costs and that a rehearing of this case be ordered.

The application for Review is based on the grounds written on the application and on a supporting affidavit of 3rd Defendant.

- that new and important matter which could not be produced in court at hearing has been discovered
- that the Plaintiff made extensions on plot 929/Lamu without approved plans and that the same are illegal structures
- that the applicants defendants have approved plans
- that court should not have received evidence of witness Ahmed Fadhil as he was only 6 years of Age when the construction is alleged.
- And other, several grounds being comments on evidence and the judgment of the court.

The applicants have exhibited minutes of the council, buildings, plans, surveyors report dated June 2005 and other documents from the County Council offices.

These are not new matters which could not have been discovered with due diligence at the time of hearing.

The defendants called evidence and should have been able to present all the evidence in court at the hearing. It is submitted that there is error on record but no indication of what error can be seen on application.

There is no reasons shown that there is ground to Review judgment the requirements of the order are clear:

1. new and important matter or exercise of due diligence was not within his knowledge or could not be produced by him at time decree was passed or order made
2. or on account of some mistake or error apparent on the face of record.
3. or for any other sufficient reason.

The applicants rely only on first ground. Second ground is only an allegation; there is no proof. Thirdly it is not pleaded "sufficient reason."

I am not satisfied that the above requirements are fulfilled in this case. Furthermore the provisions of order 44 CPC applies to decrees or orders. I have perused the application and attachments and I do not find a decree or order, which is being challenged.

Omission to attach decree or order to an application for Review is fatal to the application.

I therefore do not allow application. The same is dismissed with costs.

Delivered and dated at Mombasa this 16th day of September 2005.

J. KHAMINWA

J U D G E

16/9/05

Before Khaminwa J

Mr. Mabeya

N/A for Mr. Akanga

Ruling read, date given in court.

J. KHAMINWA

J U D G E