



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC SUIT NO. 445 OF 2014**

**IN THE MATTER OF COMPULSORY LAND ACQUISITION UNDER THE LAND ACT, 2012**

**IN THE MATTER OF AN ACQUISITION COMPENSATION APPEAL PREFERRED PURSUANT TO SECTION 128 OF THE LAND ACT, 2012**

**-BETWEEN-**

**FIVE STAR AGENCIES LIMITED.....APPELLANT**

**=VERSUS=**

**NATIONAL LAND COMMISSION.....RESPONDENT**

**RULING**

1. This is a Ruling in respect of a Notice of Motion dated 26<sup>th</sup> June 2019 in which the Respondent /Applicant seeks review of this court's ruling delivered on 13<sup>th</sup> December 2018. The Applicant contends that its submissions which were filed on 12<sup>th</sup> November 2018 were never considered. The Applicant therefore contends that there is an error apparent on the record in that the Court erroneously held that it had not filed submissions when its submissions were actually on record.
2. The Applicant therefore argues that had the court considered the submissions filed, the Court would not have arrived at the Ruling which was delivered on 13<sup>th</sup> December 2018.
3. The Appellant /Respondent opposed the Applicant's application based on a replying affidavit sworn on 7<sup>th</sup> November 2019. The Respondent contends that Applicant's application is an attack on the Ruling of the Court which action should have been taken to the Court of Appeal. The Respondent argues that the Applicant had been given 14 days from 24<sup>th</sup> October 2018 within which it ought to have filed its submissions but the submissions were filed on 12<sup>th</sup> November 2018, five days after expiry of the 14 days granted.
4. The Respondent contends that it filed its submissions on 24<sup>th</sup> October 2018 and served the same upon the Applicant's lawyers on 25<sup>th</sup> October 2018. When the Ruling was delivered on 18<sup>th</sup> December 2018, the Applicant was represented but there was no appeal preferred against the Ruling. The Applicant instead waited for six months before the application for review was filed.
5. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed herein by the Applicant. The Respondent seems not to have filed any submissions because they are not in the e-filing portal of the court. The only issue for determination is whether the Applicant has met the threshold for grant of review.
6. The impugned ruling was reserved on 24<sup>th</sup> October 2018 for delivery on 13<sup>th</sup> December 2018. The Respondent was to file submissions within 14 days of the date of being served by the Respondent's submissions. The Respondent filed submissions on 24<sup>th</sup> October 2018 and served the Applicant the following day. The Applicant was expected to have filed submissions latest by 8<sup>th</sup> November 2018. The Applicant instead filed submissions on 12<sup>th</sup> November 2018. As at the time I was writing the Ruling, the submissions were not in the file. They were actually placed in the file after ruling had been delivered. The receipt in the court file shows that payment for the submissions was made in the children's court. Both the court copy and the copy of receipt which is supposed to be retained by the Advocate for the Applicant are in the court file. This perhaps explains why the submissions were not placed in the court file in time.
7. The only ground upon which the Applicant seeks review is that there is an error apparent on the face of the record. This apparent error according to the Applicant is that this court made an erroneous finding that the Applicant had not filed submissions and that had the court considered the Applicant's submissions, it would have reached a different view. Even though the Applicant says that there is an error

apparent on the face of the record, the Applicant is actually attacking the ruling on ground that my finding was erroneous. The Law is clear that an erroneous view of a court cannot be a ground for review. It can only be good ground of appeal.

8. The Applicant in its submissions and the application itself is that the attack is on the merits of the ruling. Orders 42 of the Civil Procedure Rules is clear on the grounds for review. Erroneous findings of a court does not fall under any ground for review. The Applicant was represented when the ruling was delivered on 13<sup>th</sup> December 2018. The Application for review was made six months after the delivery of ruling. This delay is not explained. There is absolutely no merit in this application. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 25TH DAY OF FEBRUARY 2021.**

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of the date of delivery of Ruling.

Court Assistant: John

**E.O.OBAGA**

**JUDGE**