REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 166 OF 1998

GEMICIES INTERNATIONAL LIMITED V EPHAPHARUS WAWERU MUTHOKO & 4 OTHERS

T Mbaluto, Judge

August 25, 2000

T Mbaluto, Judge delivered the following ruling.

This application has been brought by the defendants for an order to review a ruling made by this court on May 19, 2000. By the same application, the defendants also seek to stay execution of a decree and to set aside the judgment entered in this matter on November 29, 1999. The application is supported by an affidavit sworn on May 26, 2000 by Ephapharus Waweru Muthoko, the 1st defendant in the suit and the grounds upon which it is based are:-

1. That defendants were never served with the Hearing Notice. 2. That the defendants have a good defence and counter-claims with high probabilities of success. 3. That it is in the interest of Justice that the defendants be given an opportunity to be heard and the case decided on merits. 4. That the defendants, their children and parents are likely to suffer irreparable loss if the plaintiff goes ahead and executes the decree upon Flora Nursery and Pre-primary School. 5. That if stay is not granted this application would be rendered nugatory. 6. That the plaintiff does not stand to suffer any loss or damage if the application herein is granted. 7. That it is in the interest of justice that the defendants be allowed to state and prove their case.

In an application for review under Order XLIV rule 1 of the Civil Procedure Rules, the applicant is required to establish the following:- (a) discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made; or (b) on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons.

A careful look at the grounds of the application listed above clearly shows that no attempt whatsoever has been made to bring the application within the purview of Order XLIV rule 1. As to the prayers for stay of execution of the decree and setting aside of the judgment, those issues were the subject of the ruling of this court made on May 19, 2000 and consequently, the court cannot revisit the same issues again. For the above reasons, I am of the view that this application has no substance and ought not to be allowed. It is dismissed with costs.