



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CIVIL CASE NO. 193 OF 2010**

**ALTON HOMES LIMITED.....1ST PLAINTIFF**

**JOHN KANGOGO.....2ND PLAINTIFF**

**=VERSUS=**

**DAVIS NATHAN CHELOGOI.....1 ST DEFENDANT**

**JOHN NDUATI NJUGUNA.....2 ND DEFENDANT**

**SAMUEL KUGEKA NDEGWA.....3RD DEFENDANT**

**JOSHUA O HALLONDA.....1ST PROPOSED INTERESTED PARTY**

**COMMERCIAL BANK OF AFRICA....2ND PROPOSED INTERESTED PARTY**

**TRANSNATIONAL BANK LTD.....3RD PROPOSED INTERESTED PARTY**

**RULING**

1. Honourable Lady Justice Gacheru rendered a judgment in this suit at Thika on 23/2/2018. Thereafter, the decree-holders brought an application seeking to execute the judgment. The application was heard *inter partes* and allowed on 7/2/2019. Subsequent to that, on 4/3/2019, Joshua Omondi Hallonda brought a notice of motion dated 4/3/2019 seeking joinder of himself, Transnational Bank Limited, and Commercial Bank of Africa, as parties to this suit. He also sought an order reviewing and setting aside the judgment of Gacheru J. That application was canvassed before me on 13/6/2019 and is the subject of this ruling.

2. During the plenary hearing of the application, Mr Odhiambo, counsel for the applicant, made extensive reference to the judgment of Gacheru J and contended that the Honourable Judge having acknowledged at page 27 of the judgment that the suit property had been sold, she ought to have ordered joinder of the interested parties. The decree-holders through their counsel, Ms Gichohi, objected to the application on several grounds. Among the grounds of objection was my jurisdiction to review and/or set aside the judgment of Gacheru J. She contended that I did not have jurisdiction to review a judgment rendered in this matter at Thika by Gacheru J

3. It is trite law that whenever the jurisdiction of a court is contested, the court is duty-bound to dispose the issue before disposing any other issue in the suit. Indeed, the Court of Appeal in the *locus classicus* case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** emphasized this approach in the following words:

***'I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'***

4. Consequently, I have decided to dispose the issue of jurisdiction which was raised by the decree-holders (plaintiffs) before making any pronouncement on the other issues in the said application.

5. The applicant has invited this court to exercise review jurisdiction under Order 45 of the Civil Procedure Rules. The applicant is clear that the application was not triggered by discovery of any new and important matter or evidence. He contends that the court having been informed of the interest of the interested parties and having acknowledged that fact, it ought not have entered judgment in the manner it did. The application before me is therefore one which falls under Order 45 Rule 2 (1) of the Civil Procedure Rules which provides as follows:

**Order 45 rule 2 (1)**

**(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed.**

6. Under Order 45 rule 2(1) of the Civil Procedure Rules, the judge empowered to exercise review jurisdiction is the judge who passed the decree herein. That judge is Honourable Gacheru. She is still stationed at Thika Environment and Land Court where she rendered the impugned judgment. The suit herein was filed at the High Court at Nairobi and subsequently transferred to the Environment and Land Court at Nairobi. The Honourable Lady Justice Gacheru heard this suit while serving at the Environment and Land Court at Nairobi. The impugned Judgment shows that she rendered it at Thika on 23/2/2018. It would appear that upon delivery of the Judgment, the file was returned to the Nairobi Environment and Land Court Registry.

7. In view of the fact that the impugned Judgment was rendered by Gacheru J at Thika Environment and Land Court and the Honourable Lady Justice Gacheru is still serving there, I find that the proper judge to hear and dispose the review application under Order 45 rule 2 (1) of the Civil Procedure Rules is the Honourable Lady Justice Gacheru. Consequently, I uphold the jurisdictional objection raised by the decree holder and direct that the notice of motion dated 4/3/2019 be placed before Gacheru J at Thika Environment and Land Court for hearing and disposal before her in accordance with the mandatory requirements of Order 45 of the Civil Procedure Rules. This matter will be given a mention date before Honourable Lady Justice Gacheru at the time of reading this ruling in open court.

**DATED, SIGNED AND READ AT NAIROBI ON THIS 9TH DAY OF JULY 2019.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Odhiambo and Mr Kariuki for 1st proposed interested party

Ms Waweru for the 2nd defendant

Court Clerk - June Nafula