



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 211 OF 2017

BEN MURUMBA NAKITAREPLAINTIFF

=VERSUS=

SPEED CAPITAL LIMITED.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

RULING

1. The Plaintiff/Applicants filed a Notice of Motion dated 9th March 2021 in which he seeks review and setting aside of the Judgement which was delivered on 5th May 2020. The Applicant contends that Judgement in this matter was delivered on 5th May 2020 in the absence of the parties. When the Applicant got to know about the delivery of the Judgement, the time for appeal had expired.
2. The Applicant then moved to court and filed an application seeking to enlarge time within which to appeal. As the application for enlargement of time was pending hearing, he came across information that the person who forged his title and signature which he used to secure a loan from the 1st Defendant/Respondent had been arrested and charged with offences related to the forged title.
3. The Applicant upon learning of this new development instructed his Advocates to withdraw the application for enlargement of time and pursue a review instead. The application for enlargement of time for filing notice of appeal was withdrawn on 8th March 2021 and the application for review was filed the following day. The Applicant argues that the evidence of the arraignment of the person who forged his documents would not have been availed during the hearing as the pace of investigations by the police could not be dictated by him. He had reported the forgery in 2016 but the police concluded their investigations in March 2021 after the Judgement had already been delivered.
4. The 1st Respondent opposed the Applicant's application based on grounds of opposition dated 10th May 2021. The 1st Respondent contends that the Applicant's application does not meet the threshold for grant of a review; that the application has been brought after inordinate delay; that the Applicant is presenting an appeal through the back door and that the charge has since crystalized and that this application is an abuse of the process of the court.
5. I have carefully gone through the Applicant's application as well as the opposition thereto by the 1st Respondent. I have also considered the oral submissions by the Applicant and the 1st Respondent. The only issue for determination is whether the Applicant has demonstrated that there is a ground for review of the Judgement.
6. An application for review is supposed to be brought without unreasonable delay. The Judgement sought to be reviewed was delivered on 5th May 2020. The application herein was filed on 9th March 2021. This is after ten (10) months from the date of Judgement. The Applicant has however explained the delay by stating that judgement was delivered in the absence of the parties. When the Applicant got to know of the Judgement, the period for filing appeal had lapsed. He filed an application seeking enlargement of time to file a notice of appeal. The application for enlargement of time was filed on 17th June 2020.
7. The Applicant instructed his Advocates to withdraw the application for enlargement of time and file one for review. The application for enlargement of time was withdrawn on 8th March 2021 and the review one was filed on 9th March 2021. I therefore find that the delay has been explained adequately.
8. The Applicant contends that he discovered new and important evidence that the man who was behind the forgery had been apprehended and had been charged in court with criminal charges touching on the forgery. The Applicant annexed a copy of the charge sheet in which one Osman Abdullahi Ali was charged with various offences vide a charge sheet signed by the office of the Director of Public Prosecutions on 2nd March 2021.

9. One of the grounds upon which review can be granted is discovery of new and important evidence which could not have been availed with due diligence when the case was heard. In the instant case, the Applicant had reported forgery of his title document and signature to the police in 2016. As at the time the hearing took place, the person who forged his signature had not been apprehended. There is therefore no way he will have given the evidence of the charges preferred against him before police concluded their investigations and charged the culprit in court.

10. As the Applicant has this new evidence which will not have been availed at the time the case proceeded for hearing, I find that the Applicant is entitled to review on account of discovery of new and important evidence. I therefore review the Judgement delivered on 5th May 2020 which is hereby set aside. The Applicant shall have costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF JUNE 2021.

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Bariki for Mr Kirimi for 1st Defendant/Respondent

Mr Court Assistant:

E.O.OBAGA

JUDGE