



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 19 OF 2019

JUSTINO MUKAMI WANYAMA.....PLAINTIFF

VERSUS

KITERE WANGIA.....DEFENDANT

AND

MICHAEL SIDNEY SIFUNA (*suing as the legal representative of the estate of*

Justino Mukami Wanyama).....**APPLICANT**

RULING

The application is dated 19th April 2021 and is brought under Order 45 rules 1 & 2 Civil Procedure Rules and Section 80 of the Civil Procedure Act seeking the following orders:-

1. That the present application be and is hereby certified urgent and be heard on priority basis.
2. That this court be pleased to review its ruling delivered on 30th April, 2020 as:-
 - a. There is an error of law on the face of record.
 - b. There may have been a mix up in the typing of the ruling.
3. That the cost hereof be in the course.

It is based on the annexed affidavit of Michael Sidney Sifuna and on the following grounds that in the ruling is in respect of the application dated 15 day of December, 2020 the applicant sought the orders for substitution of the plaintiff. That there is an error on the face of record that the court might have missed to notice the attached Limited Grant ad litem. That it is in the interest of justice that a review be undertaken to correct the error. That judgment herein cannot be enforced further for the decree holder is deceased. That there are sufficient grounds to order review of the ruling.

This court has considered the application and the submissions therein. In the case of Kwame Kariuki & Another Vs. Mohamed Hassan Ali & 4 Others (2014) eKLR, the Court observed that:-

“It is evident that the relief of review is only available where an appeal has not been preferred as against an order. Once an appeal is preferred then the door is closed on review and for good reason, as the appellant is then seeking a re-examination of the affected order on its merits, and the Court whose order is appealed from cannot purport to review or further interfere with the said order as such action is likely to affect the outcome of the appeal.”

In the case of Mwhoko Housing Company Limited vs Equity Building Society (2007) 2 KLR 171 is relevant. It was held, that;

“A review could have been granted whenever the Court considered that it was necessary to correct an error or omission on its part. The error or omission must have been self-evident and should not have required an elaborate argument to be established. It would neither have been sufficient ground of review that another Court could have taken a different view of the matter nor could it have been a ground that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or another provision of law could not have been a ground for review. There was no discovery of a new and

important matter or evidence which after due diligence was not within the knowledge of the appellant at the time the judgment and decree was passed. There was no error apparent on the face of the record or any other sufficient reason to justify review. In the Court of Appeal decision of Rose Kaiza Vs Angelo Mpanju Kaiza 2009, the Court was categorical that;

“An application for review under order 44 Rules 1 of the Civil Procedure Rules must be clear and specific on the basis upon which it is made...”

Order 45, Rule 1(b) is clear that for the court to review its decision, certain requirements should be met. This section provides as follows:

“(1). Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed.

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

I have perused the court file and find that in the application the applicant indeed does have a limited grant ad litem dated 14th December 2020. I find that this is an error on the face of the record and the court reviews its earlier ruling dated 23rd March 2012. I find this application is merited and grant the same with no orders as to costs as the same was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 21ST JULY 2021.

N.A. MATHEKA

JUDGE