



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC NO. 77 OF 2014

ALFRED BUORE NGONGA.....PLAINTIFF

VERSUS

CAPTAIN JOHN OMONDI OCHIENG.....1ST DEFENDANT

ALRED OMONDI ADIPO.....2ND DEFENDANT

LEAH AKINYI ADIPO.....3RD DEFENDANT

FRANCIS ADIPO ONDEYO.....4TH DEFENDANT

KISUMU COUNTY GOVERNMENT.....5TH DEFENDANT

RULING

The application before court, made by Alfred Buore Ngonga is dated 24th June 2018 and filed on 3/9/2018 seeking orders that the honourable court be pleased to recall, review and or set aside the ruling delivered on the 18th October 2017 dismissing the applicant's Application. That the court be pleased to grant an injunction on the Application dated 24th November 2016. That the defendant provide costs of this application.

It seeks their orders on grounds that the surveyors report is now present in relation to this matter. The application is prompt and within reasonable time. It is in the interest of justice that this application be allowed.

The application is supported by an affidavit of the applicant wherein he states that the application for injunction was dismissed because of lack of the surveyors report. The plaintiff has now attached the surveyor's report.

The application is opposed by the respondents. Valentine Oiro filed a replying affidavit stating that they were not invited for the survey and therefore the survey report is null and void. She states that the survey report should have been availed before the ruling. She states that the survey report does not provide a prima facie case to justify the grant of orders sought in the application.

The gravamen of the 5th Defendant submissions is that the applicant failed to bring the application before this court promptly and there was unreasonable delay.

This court finds that the ruling was made on 18/10/2017 but the application was made on 3/9/2018. The delay of 10 months is not explained. The delay of 10 months is unreasonable and inordinate.

On the aspect of Discovery of a new and important matter or evidence which, after the exercise of due diligence was not within his knowledge, could not be produced by him at this time when the decree was passed or the order made.

This court finds that the applicant did not exercise due diligence in conducting this case, had he done so he could have filed the report before the ruling of the Court.

I do not find any other sufficient reason for the court to review the ruling made on 18/10/2017. Application is dismissed with cost. Orders accordingly.

DATED AND DELIVERED THIS 28th DAY OF FEBRUARY, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

In the presence of:

M/S KEMBOI FOR MWAMU FOR APPLICANT

N/A FOR RESPONDENT