



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 34 OF 2011

(FORMERLY MISC. CIVIL APPLICATION NO. 562 OF 2010)

MWW

GWV

ITW.....APPLICANTS

RULING

1. Before this Court for determination is a Notice of Motion dated 19th November, 2018 in which the Applicants are seeking that the orders granted by this court on 27th October, 2014 be reviewed and the land referred to as Athi River L.R. No. 377/10/26 registered as I.R. No. 86294/20 be amended to read L.R. No. 377/10/26 registered as I.R. No. 104388. The application is brought under **Order 45 rule 1(b)** of the **Civil Procedure Rules 2010** and is supported by an affidavit sworn by MWW on 19th November, 2018 on her own behalf and on behalf of her co-administrators.

2. The requirements that an applicant must satisfy to justify the grant of an order for review are provided under **Order 45 rule 1** of the **Civil Procedure Rules (2010)** which states thus –

“(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.”

3. The present application is predicated on the ground that there is an error apparent on the face of the record. It is the Applicants’ averment that they had previously filed an application dated 3rd June, 2014 seeking to dispose of various assets for the purpose of consolidating the assets and investing in high yield areas among them Athi River L.R. No. 337/10/26 registered as I.R. No. 104388. However, in the affidavits filed in support of the application, and which the court relied on in making orders, the Applicants erroneously indicated that the property known as L.R. No. 337/10/26 was registered as I.R. No. 86294/20 when the property is in fact registered as I.R. No. 104388 on the Certificate of Title.

4. The question that follows then is what constitutes an error apparent on the face of the record. In the case of **Ryce Motors Limited vs. Jonathan Kiprono Ruto & Another [2016] eKLR**, the Court of Appeal (Karanja, Okwengu & G.B.M Kariuki JJ.A), while dealing with a similar issue cited and applied the case of **Nyamogo and Nyamogo Advocates vs. Kogo [2001] 1 E.A 173**. In **Nyamogo**, the Court of Appeal in determining an error apparent on the face of the record observed thus:

“An error apparent on the face of the record cannot be defined precisely and exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.”

5. From the record, it is evident that on 27th October, 2014 this court made an order to the Applicants, in their capacity as managers of the estate of Dr. AWW appointed as such under the Mental Health Act. The order allowed them to dispose of various assets among them Athi River L.R. No. 337/10/26 registered as I.R. No. 86294/20. The order was granted upon an application filed by the Applicants by way of a Chamber Summons dated 3rd June, 2014 and supported by an affidavit sworn by MWW on 3rd June, 2014.

6. A look at the orders sought in the application dated 3rd June, 2014 reveals that the Applicants identified the subject property as Athi River L.R. No. 337/10/26 registered as I.R. No. 86294/20. This is the information the court relied on in granting the orders of 27th October, 2014. I note however that the copy of the Certificate of Title of the subject property reveals that the original number of the property is L.R. No. 337/10/26 but the property is registered as I.R. 104388. There is therefore no doubt that there is an error apparent on the face of the record.

7. From the foregoing, I am satisfied that the Applicants have made out a case to warrant the grant of the review orders sought. Consequently, I find that the present application has merit and allow it in the terms prayed.

It is so ordered.

SIGNED DATED and DELIVERED in open court this 16th day of September, 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of.....Advocate for the Applicants.