



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 570 OF 2017**

**(Formerly Milimani ELC No. 1303 of 2013)**

**AIMA ENTERPRISES LIMITED.....PLAINTIFF**

**VERSUS**

**ANDREW M. MWONGA.....1<sup>ST</sup> DEFENDANT**

**MRS. F. M. MWONGA.....2<sup>ND</sup> DEFENDANT**

**MARY NGENDO TIBA.....3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL (SUED FOR AN ON BEHALF OF**

**THE DISTRICT LAND REGISTRAR.....4<sup>TH</sup> RESPONDENT**

**RULING**

What is before me for determination is the 1<sup>st</sup>, and 2<sup>nd</sup> Defendants' Notice of Motion Application dated the 8<sup>th</sup> July, 2019 brought pursuant to Article 48 and 159 (1) of the Constitution, Sections 80, 1A, 1B and 3A of the Civil Procedure Act as well as Order 46 and 51 of the Civil Procedure Rules. The Applicants seek the following orders:

1. Spent
2. That this Honourable Court be pleased to review its Judgment delivered on 28<sup>th</sup> March, 2019.
3. That this Honourable Court be pleased to issue an Order instructing the Officer Commanding Station Isinya Police Station to provide security during the removal of the stone wall erected across the 1<sup>st</sup> and 2<sup>nd</sup> Applicants/ Defendants road of access to their parcel of land.

The application is premised on the grounds on the face of it and the affidavit of ANDREW M. MWONGA where he deposes that on 28<sup>th</sup> March, 2019 this Court delivered its judgment in their favour where it granted mandatory injunctive reliefs and directed for the removal of the stone wall erected across the road of access within 90 days from the stated date, failure of which the Defendants would be at liberty to demolish the said wall. He explains that 90 days granted to the Plaintiff to remove the concrete stone wall blocking the road of access have lapsed and no action has been taken on its part. He avers that they are desirous in removing the concrete stone wall themselves but would need the presence of police officers from Isinya Police Station to provide security during the exercise. He reiterates that the Honourable Court has discretionary powers to include an order directing the Officer Commanding Station Isinya Police Station to provide security during the removal of the concrete wall blocking the road of access leading to their parcel of land. Further, that the Plaintiff stands to suffer no prejudice whatsoever as it has not acted in accordance with the Orders of this Court nor has it objected/ appealed the decisions of this Court.

At this juncture, the only issue for determination is whether the court should proceed to review its judgement dated the 28<sup>th</sup> March, 2019 and direct that the Officer Commanding Station Isinya Police Station to provide security during the removal of the stone wall erected across the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' road of access to their parcel of land.

Section 80 of the Civil Procedure Act and Order 45 Rule 1 (1) of the Civil Procedure Rules makes provisions on review of Court Orders and Judgments.

Section 80 of the Civil Procedure Act provides that:—**“Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”**

Further, Order 45, rule 1 (1) of the Civil Procedure Rules stipulates thus: ‘ **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.**’

The Plaintiff though duly served failed to file a response to this application. I note this Court entered judgement in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 28<sup>th</sup> March, 2019 where it granted mandatory injunctive reliefs and directed for the removal of the stone wall erected across the road of access within 90 days from the stated date, failure of which the said Defendants were at liberty to demolish it. It is the 1<sup>st</sup> and 2<sup>nd</sup> Defendants’ contention that despite the expiry of the 90 days, the Plaintiff failed to remove the said concrete stone wall blocking the road of access. I note in the said Judgement the Court had not granted security to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in case they were compelled to demolish the wall themselves. Since the application is unopposed and in relying on the legal provisions cited above, I will proceed to review my judgement dated 28<sup>th</sup> March, 2019 and direct that the Officer Commanding Station Isinya Police Station do provide security during the removal of the concrete wall blocking the road of access leading to 1<sup>st</sup> and 2<sup>nd</sup> Defendants’ parcel of land.

It is against the foregoing that I find the application dated the 8<sup>th</sup> July, 2019 merited and will allow it.

I make no order as to costs.

Dated signed and delivered via email this 29<sup>th</sup> day of April, 2020

CHRISTINE OCHIENG

JUDGE