



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

ELC CASE NO. 300 OF 2017

FRANCIS M KIMANI & ANOTHER.....PLAINTIFFS

VERSUS

NANCY W MUNYUA & 2 OTHERS.....DEFENDANTS

RULING

1. This is a ruling in respect of a Notice of Motion dated 20th April 2018. The application which is brought by the 2nd Plaintiff/Applicant seeks review of the Court's orders given on 21st February 2018.
2. The Applicant and his co- Plaintiff who has since died had filed an application in which they sought injunctive orders against the 1st and 2nd Defendants in relation to LR No. Nairobi Block 82/1342 (suit property). The 1st Defendant/Respondent also filed an application in which she sought orders that rental income from the suit property be deposited in a joint interest earning account in the names of the Advocates for the parties.
3. The application by the Applicant was dismissed but the one by the Respondent was allowed. The Applicant has now come to court seeking review of the orders which directed that rental income from the suit property be deposited in a joint interest earning account in the names of the Advocates for the parties.
4. The Applicant contends that he has since discovered new and important evidence which was not available to him at the time the orders were made. The new evidence includes a letter dated 23rd October 1990 from Messer's Njora Waweru & Associates Advocates, Maps for Donholm and Tena area and Directorship of Continental Developers Limited.
5. The Applicant argues that he has since discovered that Bernard Kingori Thigah who purported to be a director of Continental Developers Limited and who supports the Respondent's ownership of the suit property became a director of the company by merely filing returns with no resolution making him a Director. The Applicant also argues that the maps he obtained show that the plot being claimed by the Respondent could be in a different location and that the Respondent's documents are contradictory.
6. The Respondent has opposed the Applicant's application based on a replying affidavit sworn on 11th October 2018. The Respondent contends that what the Applicant claims to be new evidence particularly a letter dated 23rd October 1990 from M/s Njora Waweru & Associates Advocates had been annexed to previous affidavits by the Applicant. The Respondent also argues that Mr Bernard Kingori Thigah is a director of Continental Developers Limited as per the CR 12 which has been annexed to the Applicant's supporting affidavit and that there is no way the Registrar of Companies could have accepted to enter the name in the register of directors if there was no resolution to that effect.
7. The Respondent also contends that the source of the maps exhibited by the Applicant is not disclosed and their authenticity cannot be vouched for. She further argues that Plot 758 is one and the same as LR Nairobi Block 82 /1342. The Respondent further states that the issues which the Applicant is raising are only repetitive as the same have been raised and were addressed by the court in the ruling delivered on 21st February 2018.
8. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed by the parties herein. The only issue for determination is whether the Applicant has established a case for review of the ruling of 21st February 2018.
9. The Applicant argues that he has discovered new and important evidence which was not available as at the time the court made its ruling. There is nothing new which has been discovered by the Applicant. For instance, the Applicant says that he came across letter dated 23rd

October 1990 from Messers Njora Waweru & Associates Advocates. This letter was annexed to the Applicant's supporting affidavit sworn on 2nd May 2017 as annexure CM 8". The Applicant cannot therefore argue that this is a new discovery.

10. The Maps which have been annexed to the Applicant's supporting affidavit are documents which were available even before the time the court made its ruling. If the Applicant wanted to use them, he would have used them as they were readily available. The maps cannot therefore constitute new evidence.

11. The Applicant is arguing that Mr Bernard Kingori Thigah is not a director of Continental Developers Limited. Contrary to the allegations of the Applicant, the Applicant himself shows that Mr Bernard Kingori Thigah is a Director. Whether Mr Thigah was improperly shown as a director is a matter which will come out during the hearing of this suit and does not constitute new evidence as to call for review of the ruling of 21st February 2018.

12. The application by the Applicant is a thinly veiled attack on the ruling as can be seen from the submissions of the Applicant who claims that the ruling is causing financial hardship to the families of the Applicants. I therefore find no merit in the Applicant's application which is dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of May 2020.

E.O.OBAGA

JUDGE

In the absence of parties who had been notified of the date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE