

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 233 OF 2013

KWEYU KHAISIOAPPLICANT

VERSUS

JOHN OMOKOBI WANYONGORESPONDENT

RULING

This application by the applicant is under Order 45(i) of the Civil Procedure Rules. The applicant seeks for a Stay of Execution of the orders made by this court(Omollo J) on 30th September 2014.

The application is grounded on the fact that there is a mistake apparent on the face of the record. This mistake complained of is that court did notice a duly filed supplementary affidavit. Further that the court failed to address the issue as to whether or not the applicant was in possession of the suit land.

The application was opposed by the respondent on the ground that there is no mistake of fact disclosed or apparent in the face of the record. Further there is no discovery of a new and important matter or evidence to warrant the review of the court's orders.

I am afraid, I agree with the respondent. The issues the applicant raises in this application are not within the ambit of order 45 Rule 1 of the Civil Procedure Rules.

If I were to deal with the issue the applicant raises, I would be sitting as an appeal court on my sister's judgement. I have no such jurisdiction. I sit as a Court of equal jurisdiction. The applicant had an opportunity to ventrate her grievances through an appeal to the Court of Appeal. She opted not to do so.

An order for review is not appropriate and cannot therefore be granted.

The application herein is therefore dismissed with costs.

Dated at Bungoma this 9th day of March 2016.

S.MUKUNYA - JUDGE