

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 329 OF 2017

ADRIANO I. AMBANI.....APPLICANT

VERSUS

CHRISTOPHER A. MUSATSI.....RESPONDENT

RULING

The application is dated 28th August 2019 and seeks the following orders:-

1. That the honourable court be pleased to amend its judgment rendered on 2nd July, 2019 in terms of the first order to read Elikana Lichungu Ambani instead of Joel Ambani and exclude the line and be subjected to succession proceedings.

The applicant submitted that he filed this suit herein vide a plaint seeking orders for cancellation of the registration of the defendant on South Kabras/Shamberere/1735 (annexed a copy of the plaint). That this honourable court on 2/7/2019 rendered its judgment which was in his favour (Annexed a copy of judgment). That in the said judgment the court indeed directed that the registration of land parcel South Kabras/Shamberere/1735 be cancelled and the same be registered in the name of Joel Ambani and be subjected to succession proceedings. That the said Joel Ambani have never been registered as the owner of the said land parcel. That said land parcel was previously registered in the name of Elikana Lichungu Ambani who was holding the said land in trust for him and the respondent. That Elikana Lichungu Ambani later transferred the said portion of land to the respondent with instructions that he transfers his portion to his name. That the land registrar is not able to enforce the decree as issued herein.

The respondent opposed the application and stated that the application is incompetent and his only avenue if to apply for the review of the judgement.

This court has considered the application and the submissions therein. From the proceedings of this matter it came out in evidence that the suit land was registered in the name of Elikana Lichungu Ambani and not Joel Ambani. It is an apparent error on the face of the record. In the case of *Mwihoko Housing Company Limited Vs Equity Building Society (2007) 2 KLR 171* it was held that;

“A review could have been granted whenever the Court considered that it was necessary to correct an error or omission on its part. The error or omission must have been self-evident and should not have required an elaborate argument to be established. It would neither have been sufficient ground of review that another Court could have taken a different view of the matter nor could it have been a ground that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or another provision of law could not have been a ground for review. There was no discovery of a new and important matter or evidence which after due diligence was not within the knowledge of the appellant at the time the judgment and decree was passed. There was no error apparent on the face of the record or any other sufficient reason to justify review. In the Court of Appeal decision of *Rose Kaiza Vs Angelo Mpanju Kaiza 2009*, the Court was categorical that;

“An application for review under order 44 Rules 1 of the Civil Procedure Rules must be clear and specific on the basis upon which it is made...”

Under Section 80 of the Civil Procedure Act, the court has unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However this discretion should be exercised judiciously and not capriciously. In Court of Appeal, *Civil Appeal No. 2111 of 1996, National Bank of Kenya Vs Ndungu Njau*, the Court of Appeal held that;

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceed on an incorrect expansion of the law”.

In this matter I see the error is self evident and clear and does not require an elaborate argument to be established. For these reasons I find this application is merited and I grant it as prayed with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 28TH SEPTEMBER 2020.

N.A. MATHEKA

JUDGE