



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ELC APPLICATION NO. 48 OF 2019**  
**IN THE MATTER ARISING OUT IN THE MEANING OF**  
**DISCHARGE/ACQUITTAL FROM CRIMINAL CASE 3741 OF 1981**  
  
**AND**  
  
**IN THE MATTER ARISING FROM MARKED BOUNDARY**  
**IN 1976 BY M'BUGU M'MUGA (DECEASED) COMPRISED**  
**IN L.R NO. KIIRUA/272 BEFORE SUB-DIVISIONS**  
**IN THE MATTER OF SECTION 26C OF LIMITATION OF**  
**ACTION ACT (CAP 22) LAWS OF KENYA**  
**JOHN GITIJE.....APPLICANT**  
  
**VERSUS**  
  
**ATTORNEY GENERAL.....RESPONDENT**  
  
**LAWRENCE RIUNGU.....INTERESTED PARTY**  
  
**RULING**

1. This miscellaneous suit was dismissed vide a ruling delivered on 10.12.2019. The applicant has now filed an application dated 31.12.2019 under order XL of the civil procedure rules and under article 159 of the constitution of Kenya seeking to have the suit reinstated. The grounds in support of the application are that:

- (a) "The applicant was not allowed to address the court in matter of justice.*
- (b) The applicant's application dated 11.9.2019 arises from discharge/acquittal of eradication of surveyor beacons and trespass upon private land vide criminal case No. 3741 of 1981 but not boundary dispute as indicated in the ruling on 10.12.2019.*
- (c) Land registrar cannot make an order of inhibition restraining 2<sup>nd</sup> respondent from trespassing and developing applicant land comprised in L.R No. Kiirua/272 before sub-divisions.*
- (d) The applicant land was defrauded by abuse of court process by abetting corruption and subsequently charged vide criminal case no. 3741 of 1981 in senior magistrate court at Meru.*
- (e) Unless the application is reinstated applicant will suffer irreparable loss and damages for criminal offences to be committed by 2<sup>nd</sup> respondent".*

2. I believe the applicant desires that the court reviews its ruling of 10.10.2019 so as to hear his case all over again. The relevant provisions of law are section 80 of the civil procedure act and order 45 of the civil procedure rules.

3. **Section 80 Civil Procedure Act** provides as follows:

*“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”.*

4. **Order 45 of the Civil Procedure Rules** sets out the grounds for review of a decree or order. The same provides as follows:

*“(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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”*

5. The applicant has not demonstrated that there is discovery of new and important matters which were not within his knowledge, there is no evidence of mistake or error apparent on the face of the record and no sufficient reasons either have been advanced by the applicant to warrant the reinstatement of the suit. The applicant is raising the same issues he had raised earlier on regarding a criminal case of 1981.

6. This matter is a classic example of how litigants are falling prey into the hands of quacks masquerading as lawyers where documents are poorly drafted. For instance, this matter was filed by way of a miscellaneous application where applicant had sought for substantial orders, even challenging the jurisdiction of the magistrate’s court. After the dismissal of the application the applicant has not appealed against the ruling of 10.12.2019 and the present application is not filed as a review.

7. I would say that whereas legal representation is a costly exercise, getting quacks to file pleadings and other court documents may be even more costly as the court cannot bypass the law and procedure to accommodate poorly drafted claims.

8. The upshot of this ruling is that the application dated 31.12.2019 is found to have no merits and the same is hereby dismissed with no orders as to costs. This file is marked as **CLOSED** and the court shall not entertain any further application in this suit.

**DATED, SIGNED AND DELIVERED AT MERU THIS 21<sup>ST</sup> DAY OF OCTOBER, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the applicant through a notice issued by the court via email on 22.9.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**