

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 230 OF 1985

SERAPHINO NJOKA.....PLAINTIFF

versus

MANUNGA NGOCHI

TIMOTHEO MAKENGE.....DEFENDANTS

RULING

On 12th March, 1992 Couldrey J. and Mwera J. recorded a consent order to the effect that the applicants application for an order of mandamus was allowed and the District Commissioner ordered to hear the matter under the Land Adjudication Act Cap. 284 Laws of Kenya.

As at the time of recording the consent order Seraphino Njoka Ndungi was and still is named the applicant while the respondents were and still are Manunga Ngochi, Timotheo Makenge and the District Commissioner, Embu District.

There is now before us an application for review by way of Notice of Motion under Order 44 rule 1 of the Civil Procedure Rules brought by 19 (nineteen) people named and described as Third Parties. They seek a review of the order recorded by consent on 12th March, 1992 aforesaid.

The learned counsel for the applicant has raised a preliminary objection in law, the notice of which was served upon the Third parties to the effect that the Third Parties having not been party to the consent order cannot seek a review of the said consent order. Further, no third party proceedings were taken out before this application.

On the other hand, the learned counsel for the Third Parties has submitted that while conceding that the third parties were not parties to the consent order, they have been affected by the said order.

We have given serious consideration to the matters raised by counsel. We are inclined to agree that the Third parties lack the locus standi to seek a review of an order made by the court at the time they were not parties.

There is a further more serious omission we have noted in the application. The notice of motion did not comply with the mandatory requirements of Order 50 Rule 3 of the Civil Procedure Rules according to which every notice of motion must state in general terms the grounds of the application.

It should be noted that Order 44 of the Civil Procedure Rules under which the present application was brought does not provide for the mode or procedure of making an application for review hence the application of Order 50 aforesaid.

In C. A. NO. 211 of 1996 National Bank of Kenya Limited -v- Ndungu Njau the learned Judges of appeal said:

“On an application for review, it is particularly necessary that the application should disclose in the body of the notice of motion the ground or grounds on which the review is being sought.....this in our view was a fatal omission.”

With respect, we agree with the learned judges in that decision which is also binding on us.

In view of the foregoing we find that the preliminary objection succeeds and that the application before us is misplaced and incompetent. It is hereby dismissed with costs.

Dated and delivered at Nairobi this 18th day of March, 1998.

**A. MBOGHOLI MSAGHA
KHAMONI**

J. M.

JUDGE

JUDGE