REPUBLIC OF KENYA

IN THE ENVIRONMENT AND COURT AT KAKAMEGA

ELC APPEAL NO. E017 OF 2020

PETER OCHIENG OKEYA……APPELLANT

VERSUS

CARMEL ALMA LAMMON……1ST RESPONDENT

ORPHANS HOME OF GRACE CHILDREN'S HOME

(Suing through its board of directors

THOMAS JACOB LAMMON

STANLEY OMUTEREMA

PATRICE OWUOR ADIKA

PAMELA KAVEZA

TERESIA W. TOLOMETI

NJUGUNA JORAMUS NDANI……2ND RESPONDENT

AND

SALVATORE RUSSO……PROPOSED INTERESTED PARTY/APPLICANT

RULING

Introduction

1. Before court is a notice of motion dated 1st April 2025 filed by the proposed Interested Party/ applicant seeking orders that this court reviews, varies and or sets aside the orders of this court made on 18th September 2023; and that the court orders a proper registration of the 2nd respondent.

2. The application is supported by the affidavit of the applicant. The applicant's case is that he is a stakeholder and trustee of the fatherless children housed under the name Orphans Home of Grace and that he is also a director/ founder of the 2nd respondent. That he is a brother in law of one Carmel Alma Lammon who was founder of the 2nd respondent. That together with the other respondents they were appointed as trustees of the 2nd respondent vide trust deed dated 10th June 2025. That one Patrice Owuor Adika has in cahoots with the appellant sidelined the current chairperson of the 2nd respondent and bulldozed the appointment of officials like Pamela Kaveza the current treasurer.

3. That Salvatore Russo and Merle Russo are the sole financiers of the entire suit property being parcel No. L.R. KAKAMEGA BLOCK III/49, through mortgage. He accused the appellant of lying under oath during the trial of HCC No. 72 of 2006 to the effect that he visited Australia, where he preached and was given an offering equivalent to half the purchase price of the suit property, which information resulted in the erroneous decision of the High Court that was eventually nullified at the Court of Appeal in Kisumu. That it is factual that no one can carry cash of such magnitude and that the appellant has failed to explain how the alleged offering reached the bank accounts of the 2nd respondent.

4. He further averred that registration of the 2nd respondent has been kept a secret from stakeholders as the appellant bulldozed the registration of the orphanage as a Community Based Organization (CBO) instead of registering it as a Non-Governmental Organization (NGO). That this registration was a calculated move by the appellant so that on winding up of the CBO, the property reverts to the contributor or is divided among

members thereof, unlike the winding up of an NGO where property is not shared but given to another NGO of similar objectives. That the issue of the 2nd respondent being a CBO was the appellant's secret and that the appellant deceived the Children department by ensuring that the 2nd respondent's Constitution as CBO was changed to appear like that of an NGO, which was severally renewed at the NGO Co-ordination Board until he feigned non-compliance and disbanded the orphanage. That the 2nd respondent having been registered as a CBO it justifies the return of the suit property to the applicant as per the CBO laws. That the owner intends to transfer it back to the orphanage upon registration of the same.

5. It was his contention that the appeal herein is an abuse of the court process intended to buy time so that the appellant and the 2nd respondent's rogue officials illegally earn rent from the suit property as they evicted orphans without any court order. That the appellant is using the appeal to justify illegal eviction of orphans from the suit property so that he can grab it. That in Appeal case, Carmel Alma Lammon demonstrated how the suit

property was acquired and that the appellant's claim seeking 50% of the suit property was dismissed and now he is taking advantage of Carmel Alma Lammon's mental state to take possession of the suit property to the detriment of the fatherless who need the applicant to be joined to this suit to defend their interests. That the applicant has not challenged the decision of the Court of Appeal made on 2nd June 2016, but has instead disagreed with the lower court decision which is similar to that of the Court of Appeal. That the appellant having not contributed to the purchase of the suit property, the title deed ought to have been registered in the name of the orphanage and not in the joint names of the appellant and the 1st respondent, hence registration thereof was through deceit. That it was Carmel who founded the orphanage and had rented space from one Jack Jacob Kisia paying monthly rent of Kshs. 13, 000/=. That Carmel purchased parcel Kakamega Town Block III/49 at a consideration of Kshs. 2, 000, 000/=. That for some time Carmel had only paid Kshs. 451, 000/= and was unable to complete of the full purchase price. That the applicant

took a loan of Kshs. 1, 613, 434.80/= which sum was transferred to the orphanage account, at Barclays Bank, Kakamega branch in account No. 82***52. That on 5th June 2002 the appellant and Carmel withdrew the said amount, but that it was strange that the account was changed to the joint names of the two. That the balance of Kshs. 1,449, 000/= was paid to the vendor on 10th June 2002 by bankers' cheque.

6. The applicant contended that the appellant took advantage of the absence of the 2nd respondent's Secretary General and registered the suit property as jointly owned by him and Carmel instead of registering it in the name of the orphanage. That the appellant has failed to obey orders of the subordinate court by failing to surrender the original title. That he was apprehensive that if the appeal is allowed, the appellant and some of the 2nd respondent's rogue officials will dispose the suit property and defeat his claim over it. He sought to be joined to this appeal.

7. The application was opposed. Peter Ochieng Okeya, the appellant filed replying affidavit dated 28th April 2025

opposing the application. He stated that the application is premised on wrong legal provisions as the applicant relied on the ELRC Act Rules when this court is an Environment and Land Court. That the applicant cannot relitigate afresh matters already determined by court. That the matters complained of in the application are an effective recap of what the applicant complained about in the determined application. That this court has no jurisdiction to order "proper registration of the 2nd respondent" and that no such proceedings are before this court. That the earlier application sought joinder while the current application seeks review and a new matter of proper registration of the 2nd respondent. That the applicant is a vexatious applicant and that the application herein should be dismissed.

Analysis and determination.

8. The court has carefully considered the application, the affidavit in support thereto as well as the response. The issues that arise for the court's determination is whether the applicant has met the threshold for grant of orders for

review and whether he deserves orders that the 2nd respondent be properly registered.

9. The law that governs review of court decisions is provided for in Section 80 of the Civil Procedure Act and Order 45(1) of the Civil Procedure Rules.

Section 80 of the 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.

Order 45 Rule 1 for the Civil Procedure Rules 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 a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

10. Therefore, for an applicant to succeed in seeking orders of review, he/she must demonstrate that;

(a) **That there is discovery of new and important matter or evidence, which was not in his knowledge or could not be produced by him after exercise of due diligence; or**

(b) **That there is a mistake or error apparent on the face of the record; or**

(c) **That there is a sufficient reason; and**

(d) **An application for review must be made without unreasonable delay.**

11. In the case of ***Evan Bwire vs. Andrew Aginda Civil Appeal No. 147 of 2006*** the Court of Appeal stated as follows;

> "**An application for review will only be allowed on strong grounds particularly if its effect will amount to reopening the application or case afresh."**

12. In the case of ***Nyamogo & Nyamogo vs. Kogo [2001] EA 170;*** the court discussed the issue of an error apparent on the face of the record, as follows;

> "**An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of undefinitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law spares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a new adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal.**

13. In determining a review application, the court should also consider if there is sufficient reason to review its earlier decision. In the case of ***Sadar Mohamed vs. Charan Singh & Another,*** it was stated as follows;

> **"Any other sufficient reason for the purposes of review refers to the grounds analogous to the other two (for example error apparent on the face of the record and discovery of new and important matter)."**

14. In the instant case, the decision sought to be reviewed was made by this court on 18th September 2023. In that decision, the court declined to join the applicant herein to this appeal. Therefore, the applicant in filing his application for review on 4th July 2025, was seeking review of orders made 21 months earlier. In my view, this delay is inordinate. There was no attempt on the part of the applicant to explain why it took the applicant 21 months for him to decide to seek review. As provided for in Order 45 Rule 1 (b), an application for review must be made without unreasonable delay. This application coming up 21 months later, is nothing but an afterthought, and this delay cannot be excused.

15. On whether the application is merited, the applicant has not disclosed to this court, in which category his application falls; whether there is new evidence; or whether there is an error apparent on the face of the record or whether there is sufficient cause. What the applicant has done is regurgitate the averments made in his application for joinder dated 5th October 2022 and garnish those averments with more details why he ought to be joined to this appeal. His position remains that it was him who purchased the suit property for purposes of establishing an orphanage and that the same was fraudulently registered in the appellant and Carmel's name when the appellant took advantage of the latter's mental status and the absence of the orphanage's Secretary General. That the appellant is colluding with rogue officials of the 2nd respondent to grab the suit property. This was the same story in the applicant's application dated 5th October 2022 only that this time round, the applicant has detailed his allegations. The applicant has not told this court that the added narration was not within his knowledge at the time the ruling of 18th September 2023 was made. He has also not pointed out any

apparent error in the impugned ruling that stares one in the face, which ought to be rectified at once. Neither has he demonstrated a sufficient cause. For those reasons, I do not see any basis or justification to review the ruling dated 18th September 2023. If the applicant is unhappy with that ruling which is the gist of his complaint, all he needs to do is appeal against that decision.

16. Regarding the prayer that this court orders a proper registration of the 2nd respondent, my position is that the jurisdiction of this court is delineated in Article 162 (2) (b) of the Constitution of Kenya as read with section 13 of the Environment and Land Court Act; which is to resolve disputes concerning the environment and the use and occupation of and title to land. I am sure that the registration of the 2nd respondent as whatever entity it desires to be, does not fall within the mandate of this court. In any event, I have not seen any evidence that someone stopped the 2nd respondent from being registered as a particular entity.

17. The upshot therefore is that I find no merit in the application dated 1st April 2025, which I dismiss with costs to the appellant.

18. As this appeal has been pending before this court for 5 years, I order that the same shall be heard and determined in 6 months. The appellant shall file and serve submissions in 21 days and upon service, the respondent shall file and serve their submissions in 21 days.

19. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 2ND DAY OF OCTOBER, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms. Khisa for the appellant

No appearance for the respondent

No appearance for the applicant/ intended interested party.

Court Assistant- Delphine