



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU**

**ELC NO. 32 OF 2012**

**ROSEMARY WANJIRU NJIRAINI.....PETITIONER**

**VERSUS**

**THE OFFICER IN CHARGE OF STATION**

**MOLO POLICE STATION.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

***(Application for review; principles to be applied; case being a constitutional petition on a claim for land; petitioner having title to the said land; applicant claiming that the land was set aside for a police station; no evidence during trial that the land was set aside for a police station and judgment entered for the petitioner; applicant filing notice of appeal and later filing this application for review claiming that there is discovery of new evidence; argument that the notice of appeal defeated the application for review; not the position in law that the filing of a notice of appeal without an appeal being filed defeats an application for review; on merits of the application, the said evidence having been available all along but not presented thus circumstances not suited for a review; application dismissed with costs)***

1. The application before me is that dated 25 July 2018 filed by the respondents to this petition. The application is brought pursuant to the provisions of Section 3A of the Civil Procedure Act, and Order 45 of the Civil Procedure Rules, and the inherent jurisdiction of the court. The principal prayer in the application is prayer (3) which seeks the following order :-

*That this honourable court be pleased to review its judgment dated 19<sup>th</sup> October 2017 since the applicants herein have discovered new evidence that was not in its possession and within their knowledge during the hearing of the suit and would not have been discovered despite exercise of due diligence.*

2. The application is opposed and before I go to the gist of it, I feel it necessary to give a bit of a background so as to put the application into context.

3. This is now a fairly old matter that was commenced through a constitutional petition which was filed on 16 July 2012. The petitioner contended in the petition that she is the registered proprietor of the land parcel Molo Township Block 11/157, which she had purchased from the previous proprietors. She claimed that she had been denied occupation of her property by officers from the Molo Police Station, hence a denial of her Article 40 right to own property. In support of her case, she inter alia displayed a Certificate of Lease, issued to her on 6 January 2009.

4. In opposing the suit, the applicants claimed that the suit property was set aside as part of Molo Police station, and since the matters to me were in serious dispute, I directed that the suit be heard by way of viva voce evidence. Both petitioner and the applicants adduced evidence in support of their respective positions and I delivered a judgment on 19 October 2017.

5. In my judgment, I did observe that despite the applicants claiming that the land was set aside for the Molo Police station, there was no evidence to support this contention. There was no Part Development Plan produced, or any letter of allotment to show that the suit land was set aside for use as a police station. Neither was any evidence led on the dimensions of the police station land so as to demonstrate that the suit land is within what was set aside as police station land. That being the case, I allowed the petition, and ordered the applicants not to interfere with the petitioner's use and occupation of the suit land. It seems as if the judgment was not followed which led the petitioner to file an application for contempt dated 5 April 2018. It is while that application for contempt was pending, that this application was filed on 26 July 2018.

6. The application is supported by the affidavit of Elizabeth Marube, a legal officer serving at the office of the Deputy Inspector General, Kenya Police Service. She has deposed inter alia that they instructed a police officer to dispatch a Part Development Plan (PDP) dated 23 June 1998; PDP dated 28 September 1994; PDP dated 14 June 1995, being the documents for this matter, although they did not enclose a

forwarding letter referencing the exact suit. She has deposed that their records show that counsel who was handling the matter, one Evelyn Arisi, had called counsel handling the matter in Nakuru, Senior State Counsel E.N Njuguna, and informed him that she was sending someone to dispatch the said documents. She has averred that she has been informed by the State counsel on record that she discovered the documents while she was in the process of drafting submissions in response to the bill of costs. She has continued to state that she is advised by the State counsel on record that there was a mistake by the clerical officers in the registry that caused the said documents to be filed in the wrong record being **Nakuru Misc Application No. 73 of 2012, Rosemary Wanjiru Njiraini vs The Hon. Attorney General & Another** instead of this suit. She has deposed that she has been advised by the State counsel on record that the said documents were not brought to her attention and that the witness who testified on behalf of the State, one Job Lesinkwa, was not aware that there were more documents to be adduced at the hearing of the suit, apart from what he had attached to his replying affidavit. She has averred that the documents were inadvertently not produced in court and these include the PDP of 23 June 1998, the PDP of 28 September 1994, and the PDP dated 14 June 1995. She has proceeded to enclose these documents in her affidavit.

7. She has deposed that the State counsel on record has advised her that she exercised due diligence, and perused and scrutinized the record belonging to this case, but unfortunately the documents could not be discovered. She has mentioned that it is the duty of the Ministry or Government entity which has been sued to ensure that the State counsel in the matter is provided with sufficient instructions, documents and witnesses to be called during trial. It is her view that the mistake herein was made by counsel and that the same should not be visited upon an innocent client. It is also her view that no loss shall be occasioned to the petitioner if the application is allowed, but on the other hand, the applicant stands to suffer irreparable loss and damage if the application is dismissed. She has stated that it is in the interests of justice, especially natural justice, that all evidence available in relation to the issues in the petition be adduced and considered by the court.

8. The petitioner has sworn a replying affidavit to oppose the motion. She has deposed inter alia that the application is a mere afterthought and brought after considerable delay taking into account that it was filed on 26 July 2018 while the judgment was delivered on 19 October 2017. She has averred that this delay of about 9 months is not explained. She has stated that the applicant was well aware of the documents sought to be relied on and counsel was informed of the dispatch of the said documents. She has mentioned that the inaction or callous handling of the matter by the counsel for the applicant should not be allowed by this court to form a basis for review. She is of the view that the applicant has had time to bring to fore all documents sought to be relied upon in the case. She has pointed at this court's directions made on 10 February 2016, directing the parties to file their witness statements and bundle of documents within 30 days, and has argued that parties had ample time to bring to fore all document sought to be relied upon. She has further referred me to the court record wherein the court allowed the applicant several adjournments to enable it file its witness statements and documents which was never done. She is thus of the opinion that the application is only brought to deny her the fruits of her judgment and ought to be dismissed.

9. I invited both counsel for the applicants and counsel for the petitioner to file written submissions towards the application. No submissions were filed by counsel for the applicants and the only submissions that I have are that of counsel for the petitioner.

10. In his submissions, Mr. Kahiga, learned counsel for the petitioner, first pointed out that the applicants have filed a Notice of Appeal, and that being the case, the applicants pursuant to the provisions of Section 80 of the Civil Procedure Act, Cap 21, Laws of Kenya, and Order 45 Rule 1 of the Civil Procedure Rules, cannot pursue both the path of appeal and review at the same time. He referred me to the case of **Equity Bank Limited vs West Link Mbo Limited (2013) eKLR**, where it was held that as soon as a Notice of Appeal is lawfully filed, an appeal is deemed to be in existence. He submitted that the applicant lost the right of review immediately it filed the Notice of Appeal. To support the argument that a party cannot file an appeal and review at the same time, counsel referred me to the cases of **Julia Wagacii Njunge & Another vs Housing Finance Company Limited & Another (2005) eKLR**; **Draft & Develop Engineers Limited vs National Water Conservation & Pipeline Corporation (2014) eKLR**; **Anthony Gachara Ayub vs Francis Mahinda Thinwa (2014) eKLR**; and **Paul Muthee Munuhe vs Executive Secretary, Seventh Day Adventist Church C.K.C & 3 Others (2016) eKLR**. He further submitted that the application for review itself cannot be allowed on its merit. He submitted that there has been unreasonable delay in filing the application; that the applicants were well aware of the existence of the documents sought to be admitted; that the evidence of the PDPs was readily available if the applicants and their counsel had exercised due diligence. He contended that the scenario is that of a party who has lost litigation and then seeks to bring in evidence to plug what may have been the weakness of their case after the court has delivered judgment. He referred me to the decision in the case of **D.J. Lowe & Company Limited vs Banque Indosuez, Court of Appeal, Civil Application No. 210 of 1998 (unreported)** as frowning on such practice. He also thought that the application is incompetent as the decree sought to be reviewed has not been attached.

11. I do not give much weight to the argument that the decree sought to be reviewed is not attached, as I have in the court record a copy of the judgment, and I can very well make reference to it. I believe that the petitioner also has a copy of the judgment or can easily refer to it and I see no prejudice caused to her by the applicants not annexing a copy of the judgment.

12. In my view, the following issues are therefore subject for determination :-

- (i) Whether a party is not permitted to file an application for review after lodging a Notice of Appeal.
- (ii) Whether on the substance, the application for review ought to be permitted.

**Issue 1 : Whether a party is not permitted to file an application for review after lodging a Notice of Appeal.**

13. The starting point on this issue has to be the provisions of Order 45 which provide as follows :-

**1. Application for review of decree or order [Order 45, rule 1.]**

(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.

14. It will be seen from a reading of Rule 1(a) above, that a review is permissible, firstly, where an appeal is not allowed, and in the case of an order from which an appeal is allowed, where no appeal has been preferred. The question is whether the filing of a Notice of Appeal, is tantamount to preferring an appeal, so as to bring one outside the ambit of an application for review.

15. I have read the authorities that Mr. Kahiga submitted to buttress his argument that the filing of a Notice of Appeal is tantamount to filing an appeal and would divest one of the right to file an application for review. In the case of **Equity Bank Limited vs West Link Mbo Limited**, the Court of Appeal was dealing with an application for stay of execution pending appeal, an application that was filed pursuant to the provisions of Rule 5(2) (b) of the Court of Appeal Rules. In the matter, summary judgment had been entered in favour of the respondent for the liquidated sum of Kshs. 39,720,000/= and being dissatisfied, the appellant filed a Notice of Appeal, and later the application seeking stay pending the hearing of the intended appeal. Mr. Kahiga relied on the dictum of Musinga JA, where he stated as follows :-

*“I must go back to the question– “what is an appeal?” The Constitution does not define what an appeal is. The Constitution is the fundamental law of the land and provides a general framework and principles that prescribe the nature, functions and limits of a government or other institutions. Acts of parliament and subsidiary legislation contain the details regarding its operationalisation. I must therefore turn to rule 2 (2) of the Court of Appeal Rules which states that:*

**“appeal”, in relation to appeals to the Court, includes an intended appeal.”**

46. What is “an intended appeal”? Rule 75 (1) states as follows:

**“Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.”**

The first step in instituting an appeal is the filing of a notice of appeal. Order 42 rule 6 (4) of the Civil Procedure Rules is also relevant in considering what an appeal is. It states that:

**“for the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.”**

47. It follows therefore that as soon as a notice of appeal is lawfully filed, an appeal is deemed to be in existence and a litigant can move this Court for grant of an order of stay under rule 5 (2) (b) of this Court’s Rules.”

16. My own view of the above dictum is that it does not state that the filing of a Notice of Appeal is equivalent to the filing of an appeal. Here, the court was dealing with an application for stay of execution pending appeal, and what had then been filed was a Notice of Appeal. For the purposes of applying for stay pending appeal, the law does provide that if a Notice of Appeal is filed then, it ought to be deemed that the party has filed an appeal. This is provided for under Order 42 Rule 6 (4) which provides inter alia, that “for the purposes of this rule , an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.” The words “for the purpose of this rule” inform one that the presumption that an appeal has been filed is limited, so as to allow one to be able to file an application for stay pending appeal. The reasoning for this is not far to find, for one cannot seek orders for stay pending appeal when no appeal has been filed, yet , it may take time to file the record of appeal, and it should not be the case that the party is exposed for the entire duration of time taken before the appeal proper is filed. In the instance of this case, the judges of the Court of Appeal were dealing with an application for stay pending appeal, and thus, for the limited purposes of that application, it was deemed that the filing of the Notice of Appeal was good enough to enable the court entertain the application for stay pending appeal. The case of *Equity Bank* must therefore be seen in light of its context, that is, that it was an application for stay pending appeal, and pursuant to the provisions of the rules, the filing of the notice of appeal, is deemed enough to sustain the said application.

17. In the other cited case of **Draft Development Engineers Limited vs National Water Conservation & Pipeline Corporation**, an application for review was filed, after a Notice of Appeal was filed. It is not however clear to me from a reading of the ruling, whether a substantive appeal had been filed or not, for there is mention in the ruling of a record of appeal having been filed but also mention of an application for extension of time to file an appeal out of time. Be that as it may, the High Court was not in doubt that an appeal to the Court of Appeal had been filed and therefore dismissed the application for review.

18. The other case of **Paul Muthee Munuhe vs Executive Secretary, Seventh Day Adventist Church C.K.C & 3 Others**, was an application for review of a judgment and the court found that it was filed concurrently with a notice of appeal. The court stated as follows :-

*“Concurrent with the filing of the application for review, the plaintiff filed the notice of appeal dated 10.10.2016. The court finds that such concurrent pursuit of review and appeal rendered the application for review an abuse of the process of the court and therefore an impetus to dismissal of the application as the applicant was bound to elect review or appeal process.”*

19. In the case of **Francis Origo & Another vs Jacob Kumali Mungala**, the respondent filed suit for eviction in the Magistrate's Court which was allowed. The appellants filed an appeal to the High Court which was dismissed. They then filed an appeal to the Court of Appeal which was struck out by consent as the Notice of Appeal had been filed out of time. The appellants then filed an application in the High Court for review which was dismissed. They then filed an appeal against the said dismissal to the Court of Appeal. The court inter alia held that not only was a notice of appeal filed, but a record of appeal was actually filed which was struck out and thus the avenue of review could not be available as an appeal had already been filed.

20. Lastly in the case of **Julia Wagacii Njunge & Another vs Housing Finance Company Limited & Another**, an application for injunction was dismissed the court holding that no prima facie case had been established. The applicant then filed an application for review concurrently with a Notice of Appeal. The High Court held that by filing the Notice of Appeal, the applicant had preferred an appeal and held that the application is incompetent.

21. Putting aside the above High Court rulings which seem to suggest that the filing of a Notice of Appeal will defeat an application for review, there is the Court of Appeal decision, in the case of **Noradhco Kenya Limited vs Gloria Michele, Nairobi Court of Appeal, Court of Appeal at Mombasa, Civil Appeal No. NAI 258 of 1997, (1998) eKLR**, which held differently. In the matter, an application for review had been filed when a Notice of Appeal had been lodged. The application for review was dismissed and the applicant sought an extension of time to appeal against the said ruling. In the course of hearing of the application, an argument was raised that since the applicant had lodged a Notice of Appeal, the application for review could not lie and it was pointless granting an extension of time to appeal against the said ruling. Pall JA, while dealing with the said arguments had this to say :-

*“I agree that the remedy of review is open only when the applicant having a right of appeal has not already preferred an appeal or when no appeal is allowed by law from the order or decree pronounced by the court. But the short point in question here is: Can the lodging of the notice of appeal be tantamount to preferring an appeal itself? The filing of a notice of appeal in my humble view cannot deprive a party of his right under O.44 r. 1 of the Civil Procedure Rules to apply for review and the notice of appeal cannot be tantamount to preferring an appeal.*

**In HARYANTO VS. ED & F. Man (Sugar) Ltd Civil Appeal No. 122 of 1992 The Court of Appeal comprising of Judges of Appeal Gicheru, Kwach and Cockar (as he then was) held:**

*“(1) There was jurisdiction to entertain an application for review, notwithstanding the filing of a notice of appeal under the court of Appeal Rules and*

*(2) for an appeal to be deemed to have been preferred for the purpose of review, there must be an appeal instituted in compliance with rule 81(1) of the Court of appeal Rules.”*

Again in **MOTEL SCHWEITZER VS. THOMAS EDWARD CUNNINGHAM and another (1955) 22 EACA 252** it was held that:

*1. A notice of appeal is notice of intention to exercise a right of appeal and that*

*2. An appeal is not instituted in the Court of appeal until the record of appeal is lodged in its Registry, fees are paid and security lodged as provided in rule 58 of the Court of Appeal Rules.”*

*I am therefore unable to agree with Mr. Ndubi that as the applicant had lodged a notice of appeal which was pending when it applied to the superior court for review of the summary judgment, the superior court did not have jurisdiction to entertain the said application and that there was therefore very little chance of the applicant having a successful appeal from the order refusing the application which did not lie in law.”*

22. I have not been able to obtain a copy of the ruling in the case of **Haryanto vs ED & F Man (Sugar) Limited**, which is unreported, but the said ruling was also cited with approval by the Court of Appeal bench of Cockar, Omolo and Tunoi JJAs in the case of **I.C Kamau Ndirangu vs Commercial Bank of Africa Limited , Court of Appeal at Nairobi, Civil Appeal No. 125 of 1993 (1994) eKLR**, where the court again dealt with a matter where the High Court had held that the filing of a Notice of Appeal negated the application for review. The court stated as follows on this point :-

*“However, Mr Gatonye is on a much stronger pitch in his other reason which is supported by a decision of this Court in Civil Appeal No 122 of 1992 **Yani Haryanto v ED & F Man (Sugar) Ltd** (unreported) that a mere filing of notice of appeal did not constitute preferment of an appeal. The learned judge had clearly erred in holding that the appellant had by virtue of order 41 rule 4(4) of the Civil Procedure Rules preferred an appeal by filing his notice of appeal. Order 41 rule 4(4) of the Civil Procedure Rules is confined only to the purpose of staying execution.”*

23. The above mentioned Order 41 Rule 4(4) is similar to the current Order 42 Rule 6(4) which we have seen provides that for purposes of entertaining an application for stay of execution pending appeal, an appeal is deemed filed once the Notice of Appeal is lodged.

24. The decision of the Court of Appeal in the **Haryanto vs ED & F Man (Sugar) Limited**, was yet again followed by the High Court (Mumbi Ngugi J) in the case of **Wananchi Group (Kenya) Limited vs Communication Commission of Kenya & Another, Petition No. 98 of 2012 (2014) eKLR** (ruling of 17 September 2014) and by Odunga J, in the case of **R vs The Anti-counterfeit Agency & Another ex parte Surgipharm JR No. 11 of 2012**.

25. On my part, I am guided by the decisions of the Court of Appeal as noted in the above mentioned case of **Haryanto vs ED & F Man (Sugar) Limited** and as approved in the case of **I.C Kamau Ndirangu vs Commercial Bank of Africa** and **Noradhco V Gloria Michele**. The

mere filing of a Notice of Appeal does not divest one of the right to file an application for review. A Notice of Appeal is nothing more than an intention to appeal which may or may not be pursued. It is indeed advisable to file a Notice of Appeal, if only to preserve one's right to appeal, for an appeal cannot be filed if no Notice of Appeal is lodged and it does not always mean that every person who preserves that right of appealing by filing a Notice of Appeal will follow up on that right and file the appeal. If a substantive appeal is filed, then clearly, the same party cannot file an application for review, for in such instance, he will already have exercised his right of appeal.

26. It is therefore my holding that the fact that the applicant had filed a Notice of Appeal does not bar this court from entertaining the application for review. I will therefore proceed to determine the merits of the said application.

**Issue 2 : Whether the application for review is merited.**

27. I already laid down the provisions of Order 45 and there is no need to copy it again save to emphasize the provisions of Rule 1 (b) which lays down the matters that will bring one within the bracket of an application for review. A reading of the said sub-rule will reveal that one needs to demonstrate the following :-

*(i) That there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made; or*

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

*(iii) That there is some other sufficient reason to warrant a review of the decree or order; and*

*(iv) That such application must have been filed without unreasonable delay.*

28. From my reading of the application, the applicants sole ground for seeking review, is that there is discovery of new evidence which the applicants claim was not in their possession or within their knowledge during the hearing of the suit and that the said evidence could not have been discovered despite the exercise of due diligence.

29. I have gone through the affidavit in support of the motion which attempts to detail the claimed new evidence and I am not persuaded that there is any discovery of new evidence which could not be availed at the trial of the suit. The new evidence allegedly comprises of three PDPs dated 28 September 1994, 14 June 1995, and 23 June 1998. In her affidavit, Ms. Marube has mentioned that *"we instructed a police officer to dispatch (the said PDPs) although we did not enclose a forwarding letter referencing the exact suit."* Now, it is not stated who exactly instructed the said police officer, or who this police officer was. The date that this police officer was sent is also not stated. It was further deposed that Ms. Arisi called Mr. Njuguna, but yet again the date is not stated. There is no memo or record of any such call that has been displayed. It is further alleged that the said documents were by mistake filed in the wrong record being *Nakuru High Court Misc. Application No. 73 of 2012* instead of the record of this suit. I have taken the trouble of looking up at the said case, *Nakuru High Court Misc. Application No. 73 of 2012*. This was a judicial review motion filed by the petitioner against the Attorney General and the Registrar of Titles, challenging the manner in which the respondents proceeded to cancel her title. I have noted from the record of the said case that the respondents in the case, (the applicants herein) did not file any reply to the said suit and did not annex any such PDPs. That case was decided by Waithaka J, on 8 June 2013 and was finalized on that day. The only issue left in the suit after that decision was the taxing of the bill of costs which was done on 31 March 2014, and that is the last record in the said file. I do not therefore for one moment believe the allegation that the documents were filed in the wrong suit, for the said suit had already been finalized and closed, close to two years to the date that I gave directions on 10 February 2016, that the parties herein do file and exchange their witness statements and bundle of documents within 30 days.

30. One would have expected that within this given period of 30 days, the applicants would have written letters to their principals to seek the documents that they wish to rely on and if this had been done, then the said documents would have been made available. The said documents are documents prepared in the years 1994, 1995 and 1998 and were therefore available, or could have been made available to court, if there was exercise of due diligence to ensure that they are presented. After my ruling of 10 February 2016 which directed the filing of documents and witness statements, I note from the record that on 21 March 2016, the applicants sought an additional 30 days to file their statements and documents which I gave. More time was also sought on 12 July 2016 when the case was again mentioned but nothing was filed. The fact of the matter is that the applicants did not file any list of witnesses or list of documents despite being given an opportunity to do so. The applicants had all the time to look into their documents and witnesses, file their documents and rely on them during the hearing of the matter. They could in fact have filed what they thought they had, communicated to their principal to confirm if that is all that is to be filed, and if the list had missed some documents, this would certainly have been pointed out. As I have already mentioned, the applicants did not even bother to file what they had as their list of documents.

31. An application for review is not one aimed at allowing a party to fill in gaps in her evidence which may have led to the said party losing the suit. It is incumbent upon every party to present and table all their evidence at the trial, for a trial is only done once. A party is not allowed to present half its evidence, and after losing the case, seek a review, so that it can now present the other half of its evidence, when all along this evidence was available and could have been presented during the trial of the case. If that were allowed, parties would litigate in piecemeal *ad infinitum* and there would be no end to litigation leading to a total breakdown of the judicial process.

32. The above aside, I also do not think that the applicants deserve to be accommodated, for the application does not pass the test of reasonable time. The judgment in this matter was delivered 19 October 2017. In my judgment I pointed out that no PDP had been presented to show that the land was police station land. If Ms. Marube who has averred that she is the one handling the matter herein had bothered to read the judgment, it would have immediately occurred to her that the applicant lost the suit partly on the ground that no PDPs were presented. If indeed it is her position that the PDPs were available, but due to inadvertence they were not presented, then the application for review ought to have been filed even before the Notice of Appeal was filed, or at worst, at the time of filling the Notice of Appeal. It did not have to take 9 months for Ms. Marube to see that the petitioner's suit had been allowed partly on the reasons that no documents had been presented to convince the court that the land in issue is police station land.

33. Given the above I am not therefore persuaded that the applicant has brought herself within the parameters of an application for review and I see no merit in the said application.

34. That aside, I have also gone through the documents alleged to be the PDPs which were said to have been inadvertently left out, and even if I was to admit them in evidence, I do not see how I would have arrived at a contrary decision. Firstly, what has been displayed and claimed to be three PDPs are nothing but two draft PDPs for residential plots, and one draft survey sketch. The first of the two draft PDPs, is dated 28 September 1994, and is for some proposed residential plots in Molo, and not the police station. The said draft PDP is unapproved, and without approval, one cannot therefore claim that it is a proper PDP. The second is dated 14 June 1995 and is also an unapproved draft PDP for some additional residential plots in Molo. Again, it is not any PDP for Molo Police Station. The third document is a survey sketch seemingly for the plots in the draft PDP of 28 September 1994. I really have not seen their bearing on the plot in dispute. Thus, even if I was to allow this application and admit the said documents in evidence, I do not see how they challenge the legitimacy of the disputed plot, and I doubt if the same would have brought me to a different decision.

35. But all this is besides the point. What is important is that I see no merit in the application for review and I have no option but to dismiss the same with costs.

36. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 19<sup>th</sup> day of February 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

No appearance on the part of the State Law Office for the applicant.

Ms. Kinuthia present holding brief for Mr. Kahiga for the petitioner/respondent.

Court Assistant: Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**