



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 294 OF 2017

JOSEPH KARIUKI KARANJA.....PLAINTIFF

VERSUS

GUARANTY TRUST BANK (KENYA) LTD.....1ST DEFENDANT

BENJAMIN GATHIRU T/A REGENT AUCTIONEERS.....2ND DEFENDANT

RULING

1. By Notice of Motion dated 6th June 2018, the plaintiff seeks an order that this court's orders of 4th May 2018 be reviewed. I believe that what the plaintiff is referring to is the orders of 3rd May 2018 since although ruling in respect of plaintiff's Notice of Motion dated 13th July 2017 was scheduled for delivery on 4th May 2018, it was delivered a day earlier on 3rd May 2018 owing to an oversight as explained on record. By the orders of 3rd May 2018, the court dismissed Notice of Motion dated 13th July 2017, an application pursuant to which the plaintiff sought an injunction to restrain the defendants from selling the suit property.

2. Notice of Motion dated 6th June 2018 is supported by an affidavit sworn by the plaintiff. He deposed that he had paid to the defendants a sum of KShs 400,000 by banker's cheque dated 9th May 2018 and that he had been awarded a contract worth KShs 6,000,000. He therefore urged the court to review the orders of 3rd May 2018 so to allow him to pay the defendants by instalments.

3. The defendants opposed the application through a replying affidavit sworn by Charles Amanga, a Recoveries Manager employed by the 1st defendant. He denied that the plaintiff had paid KShs 400,000 as alleged and urged the court to dismiss the application.

4. Although counsel for the applicant urged the court to allow filing of written submissions, the plaintiff/applicant did not file any written submissions, opting instead to rely on the application and the supporting affidavit. On their part, the defendants filed written submissions.

5. I have considered the application, the affidavits and the submissions. Order 45 rule 1(1) of the Civil Procedure Rules provides:

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.

6. The applicant has not disclosed either in the affidavit in support of the application or by way of submissions, any new and important matter or evidence, any mistake or error apparent on the face of the record, or any other sufficient reason to warrant granting the orders sought. In the circumstances, I find no merit in the Notice of Motion dated 6th June 2018. It is dismissed with costs to the defendants.

7. Delay in delivery of this ruling, which was occasioned by the fact that I proceeded on medical leave, is regretted.

Dated, signed and delivered in open court at Nakuru this 30th day of April 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

Mr Mutai holding brief for Mr Muhoro for the defendants/respondents

Court Assistants: Beatrice & Lotkomoi