



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC CASE NO. 93 OF 2008**

**FLORENCE WAIRIMU KARIUKI.....1<sup>ST</sup> PLAINTIFF**

**ELIZABETH W. MUTEMBEI.....2<sup>ND</sup> PLAINTIFF**

**JANE WANJIKU MUNA.....3<sup>RD</sup> PLAINTIFF**

**HELEN WANGARI KAMAE**

**(Suing as the legal representative**

**of the Estate of Wilfred Kamae (deceased).....4<sup>TH</sup> PLAINTIFF**

**PETER CYRUS MUNIOH.....5<sup>TH</sup> PLAINTIFF**

**LEE KAGO MWANGI.....6<sup>TH</sup> PLAINTIFF**

**SAMMY NJAU CHEGE.....7<sup>TH</sup> PLAINTIFF**

**=VERSUS=**

**NAIROBI CITY COUNTY.....DEFENDANT**

**RULING**

1. The Plaintiffs/Applicants filed a Notice of Motion dated 26<sup>th</sup> October, 2018 in which they seek review of the judgment of this Court delivered on 20<sup>th</sup> December, 2017. The Applicants contend that the judgment being impugned was delivered contrary to an interlocutory judgment entered herein on 5<sup>th</sup> August, 2008. The Applicants argue that what I should have done was to assess damages as they already had a judgment in their favour and that instead of doing that, I proceeded to deliver a judgment in complete disregard of the interlocutory judgment which had been entered.

2. The Applicants argue that they had requested for proceedings for appeal purposes but that the proceedings could not be availed in time due to non-availability of the Court file. When the file was finally traced after their Advocates wrote a letter to the Deputy Registrar, time had gone hence the delay in filing this application. The Applicants argue that failure of this Court to take into account the interlocutory judgment constituted an error apparent on the record which warrants review of the judgment.

3. The Applicants' application is opposed by the Respondent based on grounds of opposition filed on 11<sup>th</sup> February, 2019. The Respondent contends that there are no grounds for review of the judgment and that if the Applicants are aggrieved with the judgment which was pronounced based on evidence, they should have appealed against the same. The Respondent further contends that the Application is brought in bad faith and is an abuse of the Court process.

4. I have considered the Applicants' application as well as opposition to the same by the Respondent. I have also considered the oral submissions by the Counsel for the parties herein during hearing of the application. The only issue for determination is whether the Applicants have demonstrated grounds for review of the judgment which was delivered on 20<sup>th</sup> December, 2017.

5. The grounds for review are clearly set out under order 45 of the Civil Procedure Rules. Review can be granted on discovery of new and important evidence, error apparent on the record or for any other sufficient reason. In the instant case, the Applicants are stating that this Court wrote a judgment which did not take into account that there had been an interlocutory judgment in their favour. To the Applicants, I ought to have only assessed damages and costs as directed by the Deputy Registrar who entered the interlocutory judgment.

6. There is no doubt that there was an interlocutory judgment entered herein on 5<sup>th</sup> August, 2008. There is also no doubt that the Respondent's defence which was filed before the setting aside of the interlocutory judgment was struck out. There being no defence and interlocutory judgment having been entered, the case had to proceed by way of formal proof.

7. The Applicants' claim was not for a liquidated sum. Even if interlocutory judgment had not been entered, the case had to go through formal proof. The Applicants were heard and the Court found that they had not proved their case which was in any case statute barred. This being the case, the Applicants should have pursued an appeal and not come by way of review to attack the judgment. A good ground of appeal may not be a ground of review. There was no error apparent on the face of the record. The Court was aware that there was interlocutory judgment. The Applicants had failed to prove their case and their only recourse was to appeal to the Court of Appeal if they were not satisfied. I find that the application for review has no basis. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 25<sup>th</sup> day of April, 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of M/s Wangui for Applicant

M/s Wambui for Mr. Mboya for Respondent

Court Assistant – Hilda

**E.O.OBAGA**

**JUDGE**

**25.4.2019**