



**IN THE ENVIRONMENT AND LAND COURT**

**AT KERICHO**

**MISCELLANEOUS CIVIL APPLICATION NO. 6 OF 2018**

**WILLY KIPKOECH KIRUI**

*(Appealing as the legal representative of the late*

**JOHN K. ARAP ROTICH).....PROPOSED APPELLANT/RESPONDENT**

**VERSUS**

**PETER KIPLANGAT RONO.....PROPOSED 1<sup>ST</sup>/ RESPONDENT/APPLICANT**

**MANINI AUCTIONEERS**

**AND GENERAL AGENCIES LTD.....PROPOSED 2<sup>ND</sup> RESPONDENT**

**RICHARD KIBII MUTAI.....PROPOSED 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction**

1. This Ruling is in respect of the Proposed 1<sup>st</sup> Respondent's application dated 3<sup>rd</sup> August 2018 in which the Applicant seeks that the ruling and order of the court made on 29<sup>th</sup> November 2017 be reviewed on the grounds that the Environment and Land Court has no jurisdiction to entertain the Appellant's application for leave to appeal out of time as the claim in the lower court relates to a refund of money and not a land dispute.

2. The application is based on the grounds stated on the face of the Notice of Motion and the Applicant's affidavit sworn on 3.8.2018. In the said affidavit the Applicant deposes that he is the Plaintiff in Kericho CMCC NO. 106 OF 2014 where he sued the proposed Appellant's late father for a refund of the purchase price in respect of land parcel number KERICHO/KIPCHIMCHIM/2192. He has attached a copy of the plaint.

3. The case was decided in favour of the Applicant after which execution ensued by way of attachment and sale of the proposed Appellant's father's land to recover the money. Being dissatisfied with the said judgment, the Applicant applied for leave to appeal out of time. After both parties had filed their submissions, the matter was transferred to the Environment and Land Court on 29.11.2017. This court subsequently delivered its Ruling on the application for leave to appeal out of time on 18.4.2018. The present application was filed 9 months after the matter was transferred to this court and 4 months after the court had delivered its Ruling on the application for leave to appeal out of time.

4. The application was opposed by the proposed Appellant through his Grounds of opposition in which he states inter alia that the application has been overtaken by events as the court has already admitted the appeal and the same has been fixed for hearing.

5. The application was canvassed by way of written submissions and even though both parties indicated that they had filed their submissions, at the time of writing this Ruling, only the Respondent's submissions were in the court file.

**Issues for determination**

6. The only issue for determination is whether the Applicant has satisfied the grounds for review.

7. The conditions for review are set out in Order 45 (1) of the Civil Procedure Rules as follows:

*“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 a 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 review of judgment to the court which passed the decree or made the order without unreasonable delay”.*

### **Analysis and Determination**

8. The Applicant’s main reason for seeking a review is that the court has no jurisdiction since the dispute in the lower court related to a refund of the purchase price pursuant to contract for the sale of land. The Applicant therefore argues that this is purely a money decree and therefore this court has no jurisdiction. I have looked at the Plaint in CMCC No.106 OF 2014 and there is no dispute that the case relates to a contract for the sale of land parcel number KERICHO/KIPCHIMCHIM/2192. One of the alternative reliefs sought is that “the Defendant complies with the agreement” This amounts specific performance which would involve transfer of the land which was the subject matter of the agreement. In the circumstances, the appeal falls within the jurisdiction of this court.

9. Even assuming that the Applicant was right, he ought to have raised the issue of jurisdiction at the earliest possible opportunity. It is clear from the provisions of Order 45 Rule 1(b) that the application must be made without unreasonable delay. Why would the Applicant wait for 9 months after the matter has been transferred to file the application for review and for the court to admit the appeal before arguing his application for review? In view of what has transpired in this matter, I consider the delay to be unreasonable.

10. For the foregoing reasons, I find no merit in the application and I hereby dismiss it with costs to the 1<sup>st</sup> Respondent.

Dated, signed and delivered at Kericho this 16<sup>th</sup> day of April 2019

**J.M ONYANGO**

**JUDGE**

In the presence of

Miss Ngetich for the Applicant

Mr. Kemboi for Mr.Onesmus Langat for the Respondent.

Court Assistant: Rotich