



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 130 OF 2016**

**PETER WASWA CHIMOSO.....PLAINTIFF/APPLICANT**

**VERSUS**

**LAWRENCE DAUDI CHIMOSO.....DEFENDANT/RESPONDENT**

**RULING**

The application is dated 25<sup>th</sup> April 2019 and is brought under Order 45 rule 1 and of the Civil Procedure Rules seeking the following orders:-

1. That the Honourable court be pleased to review the judgement delivered in this case on the 27<sup>th</sup> of June 2018 since there is a mistake and or error apparent on the face of the record.
2. Costs of the application be provided for.

The applicant submitted that, he filed the case herein claiming title for 1.1 ha of land parcel number South Kabras/Shamberere/656 which he currently occupies from the defendant/respondent who is his brother. That he occupies 1.1 ha of land parcel number South Kabras/Shamberere/656 as part of his inheritance from their late father Chimoso Wambululi. That the defendant/respondent has never questioned his occupation of 1.1 ha of land parcel number south Kabras/Shamberere/656 since he was aware that he is entitled to inherit the same. That the honourable court gave its judgment on the 27<sup>th</sup> day of June, 2018. That when his counsel on record read the judgment he discovered that there was some mistake and error apparent on the records of the court. That his counsel on record informed him that the judgment delivered was in respect of adverse possession and yet his claim was for customary trust.

The respondent submitted that the plaintiff/applicant's said application is not only incompetent but is bad in law, frivolous, does not disclose a reasonable cause of action and is otherwise an abuse of the due process of the court and the same should be struck out and dismissed with costs. That the plaintiff/applicant's evidence neither supported a claim under customary law trust nor under any other law. That in particular the plaintiff/applicant led no evidence as to the existence of a customary trust nor did he lead any evidence that would confer any interest in land parcel No. S. KABRAS/SHAMBERERE/656 upon him under adverse possession. That further there is nothing in the judgment to show that there was any miscarriage of justice so as to interfere with the judgment entered herein in his favour.

This court has carefully considered the application and the submissions therein. The applicant submitted that, the judgment delivered was in respect of adverse possession and yet his claim was for customary trust. I have perused the judgement and find that the court did observed that they was a succession matter and later this one. I find that no sufficient material has been placed before this court to warrant issuance of the orders sought. In the case of National Bank of Kenya Limited vs. Ndungu Njau 1997 e KLR

Holding at page 4 paragraphs 3 and 4

*“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another judge could have taken a different view that the court proceeded on an incorrect position of the law and reached an erroneous conclusion of the law. Misconstruing a statute or other provision of the law cannot be a ground of review.*

In the instant case, the matters in dispute had been fully canvassed before me. I made a conscious decision on the matters in controversy and conclusion of the law, it could be a case for appeal but not for review, otherwise I would be sitting in appeal on my own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it. I find this application has no merit and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 14<sup>TH</sup> DAY OF MAY 2019.**

**N.A. MATHEKA**

**JUDGE**