



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 385 OF 2013**

**FLORENTINA KIMOI KIMUTAI.....1<sup>ST</sup> PLAINTIFF**

**JOEL KIPROTICH KIMUTAI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FRANCIS CHUMA.....DEFENDANT**

**RULING**

The applicant prays that the honourable court be pleased to review, vary and/or set aside its order made on the 17<sup>th</sup> January, 2019 in so far as it found the 2<sup>nd</sup> plaintiff guilty of contempt of court pursuant to the defendant's motion dated the 7<sup>th</sup> April, 2015 and in so far as it found that no replying affidavit had been filed to the said application thus the allegations thereon were not controverted.

That the honourable court be pleased to consider the application dated the 7<sup>th</sup> April, 2015 together with the 2<sup>nd</sup> plaintiff's replying affidavit filed on the 3<sup>rd</sup> October, 2017 and the parties' submissions thereto and makes a determination thereof.

The application is based on grounds that there is an error apparent on the face of the records and that sufficient cause exists to warrant a review. That the application has been made without undue delay. That the 2<sup>nd</sup> plaintiff runs the peril of loss of liberty without a hearing.

Joel Kiprotich Kimutai states that the decision of the court in finding him guilty of contempt of court was motivated by the fact that a replying affidavit had not been seen by the court in respect of the application dated the 7<sup>th</sup> April, 2015 hence the allegations therein were not controverted as can be gleaned from page 4 lines 12-13 of the ruling.

That this was however an error apparent on the face of the record as on 3<sup>rd</sup> October, 2017, he did file in court a replying affidavit sworn on the 2<sup>nd</sup> October, 2017 in respect of the application dated the 7<sup>th</sup> April, 2015 and served the defendant's advocates with the same on the 5<sup>th</sup> October, 2017 together with a list of authorities. That he did also file submissions on 21<sup>st</sup> May, 2018. That it is clear that it was an error to find that the motion was unopposed.

I do find that the court fell into error by finding that there was no replying affidavit as I have seen the replying affidavit. However, I have looked at the replying affidavit filed on 3.10.2017 sworn on 2.10.2017 by Joel Kiprotich Kimutai and do find that it merely raises technical issues. There is no evidence that Joel Kiprotich Kimutai was on duty at Moi Air Base in Nairobi County and therefore I do not find grounds to review the decision of the court. The application is otherwise dismissed with no order as to costs.

**Dated and delivered at Eldoret this 27<sup>th</sup> day of June, 2019.**

**A. OMBWAYO**

**JUDGE**