



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

ELC NO. 464 OF 2007

(FORMERLY HCCC NO. 2087 OF 2001)

GEORGE ROMBO (Deceased).....PLAINTIFF

=VERSUS=

JONES GIBSON MWANGI.....DEFENDANT/APPLICANT

AND

HOUSING FINANCE COMPANY OF KENYA.....THIRD PARTY

RULING

1. The Defendant/Applicant filed a Notice of Motion dated 16th August, 2018 in which he sought the following orders:-

- 1. That the judgment of 19th February, 2018 be set aside in total and the Defendant's unchallenged Written Submissions dated 1st November, 2017 be ruled a fresh as at on 23rd November, 2017 when the Court directed and entered a ruling date of 8th February, 2018 as the Third Party Lawyer, Abuya Abuya prayed.**
- 2. That any pleadings made after the Ruling date of 8th February, 2018 was set down on 23rd November, 2017 be expunged from the Court record due to their irregularities and un-procedural in practice and the judgment was rendered partisan.**
- 3. That the Hon. Court make declaration that the Third Party Lawyer, in an open Court on 23rd November, 2017 prayed the Court that the Defendant's Written Submissions be ruled without the Third Party filing a Replying Affidavit be taken that all the alleged facts by the Defendant are True and this Admission be judged forthwith.**
- 4. That the Hon. Court be pleased to make instant orders to dislodge the Defendant's year 2001 A/c statement, which Account No.01/091079 information is primary computerized information to enable the Court to arrive to a balanced and fair judgment which information the Third Party deleted to conceal the final entries for the sale deal between the purported purchaser and the seller (HFCK) was a conspiracy for defraudment.**

2. The Application is expressed to be brought under the provisions of Order 45 Rule (1) and Sections 3A and 80 of the Civil Procedure Act. Order 45 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act deal with review. The Applicant herein seeks setting aside of the judgment but most of the grounds he is raising are not contemplated under Order 45 of the Civil Procedure Rules. What he has raised should have been raised in the Court of Appeal by way of Appeal.

3. The Applicant complains that the Court failed to find that the cheques which were issued should have been accompanied by receipts; that the judgment delivered portrays the Applicant as a man who cannot raise Kshs.1,700,000/= and that the Court failed to consider crucial documentary evidence. The Applicant further argues that the cheques which the Court relied on were bogus cheques and that the cheques were meant to cover the criminal activities of the Respondent.

4. The Applicant further argues that the Court failed to make a finding that he had redeemed his mortgage and that there was an overpayment. The Applicant further goes on to accuse the Court of allowing the Respondent to file submissions after a date had been reserved for judgment and that the case was removed from the cause list on 8th February, 2018 without his knowledge and that on the said date the Respondent had hired a lady lawyer to come and hold brief for its Advocates which act rendered the judgment to be partisan.

5. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 15th November, 2018. The Respondent contends that the Applicant's application is an abuse of the process of the Court and that it does not raise any grounds to warrant a review.

The Respondent also contends that the application for review was brought after inordinate delay and that the Court had considered all the materials placed before it before a judgment was rendered.

6. I have considered the Applicant's application as well as the opposition to the same by the Respondent. This being an application for review, the Applicant was expected to show either that there was discovery of new and important evidence which could not be availed with due diligence during the hearing or there was an error on the face of the record or that he has sufficient reason to warrant review of the judgment.

7. The judgment which is sought to be reviewed was delivered on 19th February, 2018. The application for review was made on 16th August 2018, almost six months later but considering that the Applicant is acting in person, he may have not known that such applications ought to be brought promptly. The Applicant is not saying that he has discovered any new evidence. There is also no error apparent on the face of the record which has been pointed out by the Applicant.

8. The Applicant seems to be attacking the manner in which the Court treated the evidence. This cannot be a ground for review but may form a good ground for appeal. The Applicant alleges that the matter was removed from the cause list on 8th February, 2018 without his knowledge. The truth of the matter is that the Applicant was present when the judgment was deferred to 19th February, 2018. He cannot therefore claim that the judgment delivered on 19th February, 2018 was partisan on account of the matter not having been listed on the day's cause list.

9. The Applicant also seems to suggest that after the Respondent's lawyers were allowed to file their submissions on 23rd November, 2017 the Court should have demanded that he files replying submissions. The Court is under no obligation to demand that a litigant files replying submission where already that litigant has filed submissions and does not seek leave to file further submissions. The Applicant seems to be under a mistaken belief that submissions ought to be supported by a replying affidavit. There is no requirement in law for that. The Respondent was therefore not under any obligation to file a replying or supporting affidavit to the submissions.

I therefore find no merit in the Applicant's application which is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of June, 2019.

E.O.OBAGA

JUDGE

In the presence of Defendant/Applicant in person.

Court Assistant Hilda