



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 156 OF 2010

MARGARET NDUKA KAMITHI.....1ST PLAINTIFF/RESPONDENT

GEORGE NJENGE KAMITHI.....2ND PLAINTIFF/RESPONDENT

=VERSUS=

ANNUNCIATA WAITHIRA KIBUE.....1ST DEFENDANT/APPLICANT

PAUL KIMARI KIBUE.....2ND DEFENDANT/APPLICANT

SUSAN NJERI KIBUE.....3RD DEFENDANT/APPLICANT

RULING

1. This is the notice of motion dated 25th October 2018 brought under order 51 rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B, 3A & 80 of the Civil Procedure Act and all other enabling provisions of the law.
2. It seeks orders that:-
 - (1) *That this honourble court be pleased to review the orders and directions given by Hon. Lady Justice Kossy Bor on 26th July 2018 be effectively directing that this suit proceeds to be heard de novo.*
 - (2) *That the costs of this application be granted to the defendants/applicants.*
3. The grounds are on the face of the application and are set out in paragraphs 1 to 14.
4. The application is supported by the affidavit of M. N. Ng'ang'a, Advocate for the defendants/applicants sworn on the 25th October 2018 and a further supporting by Annuciata Waithira, Kibue, Paul Kimari Kibue and Susan Njeri Kibue sworn on the 17th December 2018.
5. The application is opposed. There is a replying affidavit sworn by Margaret Nduta Kimathi, the 1st plaintiff/respondent on the 13th November 2018.
6. On the 20th December 2018 the court directed that the application be canvassed by way of written submissions.
7. I have considered the notice of motion and the affidavits in support, I have also considered the replying affidavits, the written submissions of counsel and the authorities cited. The issue for determination is whether this application is merited.
8. The defendants/applicants stated that this application has been brought under Section 1A, 1B, 3A and 80 of the Civil Procedure Act. It therefore goes without saying that this application is brought under order 45 rule 1 of the Civil Procedure Rules which provides that:-

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

9. I have gone through the grounds in this application. The same do not fall within order 45 rule (1) of the Civil Procedure Rules. The only recourse for the defendants/applicants is to appeal against Lady Justice Bor’s orders. To date they have not done so.

10. In the case of **Stephen Boro Githia vs Family Finance Building Society & 3 Others Nairobi Civil Application No. 263 of 2009**, Nyamu J (as he then) was held thus:-

“...A new dawn has broken forth and we are challenged to reshape the legal landscape to satisfy the needs of our time. The court must warn the litigants and the counsel that the courts are now on the driving seat of justice and the courts have a new call to use the overriding objective to remove all cobwebs hitherto experienced in the civil process and to weed out as far as practicable the scourge of the civil process starting with unacceptable levels of delay and lost in order to achieve resolution of disputes in a just, fair and expeditious manner. In the circumstances I decline the request to have this matter reheard afresh and direct that the case proceeds from where it had reach. I also direct that this case be fixed for hearing on a priority basis”.

I am guided by the above authority in finding that the defendants/applicants have not put forth sufficient grounds to warrant this court to review and/or set aside Lady Justice Bor’s directions and/or orders made on 26th July 2018.

11. I find no merit on this application and the same is dismissed. The costs do abide the outcome of the suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 20TH day of JUNE 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Abuya for Karungo for the Plaintiffs

Mr. Ng’ang’a for the Defendants

Kajuju - Court Assistant