



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**MISC. APPLICATION NO. 24 OF 2017**

**RURAL HOUSING ESTATE.....APPLICANT/INTERESTED PARTY**

**VERSUS**

**THE NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE ESTATE OF SISIWA.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

The application before court is dated 30/11/2017 wherein Rural Housing Estate seeks orders that the honourable court to review its judgment delivered on 23/10/2017 and to set aside all proceedings and judgment and to order the matter to start *de novo*. The application is based on grounds that **the Applicant/Intended 3<sup>rd</sup> interested party is the registered owner of the parcel of Land L. R. 772/4/2 from 1978 to date and thus he holds an interest in the land in question. The said title has never been revoked and/or his ownership been questioned in court by the Estate of Sisiwa Arp Malakwen to date since it was purchased by the Applicant.**

**The Applicant/Intended 2<sup>nd</sup> Interested party has never been under investigation and or been called by the applicant National Lands Commission vide a letter to a sitting which deliberated on the ownership of the said land.**

**The Applicant National Land Commission having established in the pleadings the existing of other stakeholder through change of hands in the ownership, it was prudent that the Applicant be made a party so that the court would be make a succinctly informed finding an issue No. 1 to wit the interested party sought to know who is the person/s with legally verifiable interest in the parcel of Land L. R. 772/2 Huruma estate, Eldoret Town, Uasing Gishu County, Rift Valley Region.**

**That whereas there are several averments in the pleadings by the claimant National Lands Commission pointing to the Applicant/Intended 2<sup>nd</sup> interested party for instance paragraph M, U, V among others as having interest in the property, the said Applicant herein was never invited to participate in the pleadings.**

**That the judgment of the court having been addressed itself to the issue of ownership did make note of an existence of transfer of land to other parties including the Applicant herein thus need to have had the said party involved in the proceedings and/or enable the court understand and/or authenticate the facts as they should be.**

**That the Applicant having been severally mentioned by the National Land Commission and the Honorable court acknowledging the same, it is therefore in the interest of justice that the Applicant herein ought to have been enjoined and the Court called upon to make a determination on who had a valid title to the land in question thus the Applicant should be enjoined to enable the court make an informed decision on the aspect of who is the benafide interested party in the matter.**

The application is supported by the affidavit of Elesh Kumar Gheewala and has annexures of the agreement dated 5/7/1978 wherein consolidated properties Ltd an associate company of the Applicant bought L.R. NO. 776/4/2 from Ramesh Lall Aggarwal.

It is evident that after purchase, the interested party obtained transfer of LR NO. 776/4/2 then converted to Eldoret Municipality Block 13/2316. It is alleged that a new title was issued to Rural Housing Ltd. Parcel of land number 15/236 was subdivided to create 15/324, 329, 330, 331, 332, 333. It is alleged that the applicant purchased properties no LR NO. 778/1, (15/233) and 776/4/1 (15/234)

The applicant claims that she was entitled to compensation for compulsory acquisition of the parcels of land and was promised compensation

but did not receive anything.

The applicant states that Arap Sisiwa sold the property and transferred the same to the applicant but now purports to having a valid title. The applicant further states that the late Malaken Arap Sisiwa sold the property to 3<sup>rd</sup> part such as Edward Koech, David Koech, Isaac Koech and Peter Koech.

The applicant claims that he is the legal owner of the property. He states that no compulsory acquisition was ever done in respect of the suit parcel.

The 1<sup>st</sup> respondent denies the allegation by the applicant and states that the disputed land was acquired in government way back in 1978. He states that the estate of Malaken was registered on 26/9/1964 and held it until 7/9/1978 when the government entered a caveat claiming absolute ownership.

The estate of the late Sisiwa through affidavit of Hassan Sisiwa contended that their father never sold the land to anyone. It is alleged that the title deed held by the applicant is fraudulent.

It is clear from the above facts that this is a dispute as to the ownership of the suit land and therefore the applicant has a write to be heard. Whether the ownership documents held by the applicant were fraudulently obtained or not is an issue to be determined by the court and the same cannot be determined without hearing the applicant.

This application is brought under the provisions of section 80 of the Civil Procedure Act Cap 21 Laws of Kenya and Order 45 Rule 1 of the Civil Procedure Rules which provide that:

**“Section 80. Review**

*Any person who considers himself aggrieved—*

*(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*

*(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”*

**Section 63 (e)**

*In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient.*

[Order 45, rule 1.] Application for review of decree or order.

*1. (1) 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.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”*

Therefore, **Order 45 of the Civil Procedure Rules, 2010** is very explicit that a court can only review its orders if the following grounds exist: -

**(a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or**

**(b) There was a mistake or error apparent on the face of the record; or**

**(c) There were other sufficient reasons; and**

**(d) The application must have been made without undue delay.**

The pertinent issue for determination herein, therefore, is whether the Appellant has established any of the above grounds to warrant an order

of review.

The right to be heard is cardinal and can't be wished away and therefore courts will not hesitate to review a decision on grounds that an affected person was not heard.

The applicant has demonstrated that he is an affected person by the order of the court and yet he was not heard. I do find that the applicant had a right to be heard and the fact that he was not heard and yet the decision of the court affected him is sufficient reason for reviewing the judgment herein. There is no evidence that the titles held by the applicant were cancelled. There is need to re-hear the matter and determined the ownership of the property between the applicant and the 2<sup>nd</sup> Respondent.

On undue delay, I do find that the applicant was made aware of the judgement on 20<sup>th</sup> November 2017 and filed the application on 4<sup>th</sup> December 2017 and therefore acting within 14 days which was expeditious. The applicant has satisfied the grounds for review and therefore I do allow the application, proceedings herein are hereby set aside and I do order that the matter to start de novo. Costs to the applicant. Orders accordingly.

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**DATED AND DELIVERED at KISUMU THIS 13<sup>TH</sup> DAY OF DECEMBER, 2019.**

**In the presence of:**

**N/A FOR APPLICANT**

**N/A FOR 1<sup>ST</sup> RESPONDENT**

**MR NYEKWEI FOR 2<sup>ND</sup> RESPONDENT**

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**