



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 44 OF 2015**

**GEORGE KITIYO KAMARY.....PLAINTIFF**

**VERSUS**

**STEPHEN LOWASIKOU MWOL.....DEFENDANT**

**R U L I N G**

1. The application dated 3/6/2017 seeks orders that this court be pleased to arrest and/or stay the intended Ruling pursuant to the taxation of the plaintiff/respondent's supplementary bill of costs dated 27/4/2017 and stay all execution proceedings herein pending the hearing of the application *inter partes* and also that this court be pleased to review and/or vacate the judgment dated 7/11/2016 so that the matter be heard *de novo*.
2. The application is supported by the sworn affidavit of Stephen Lowasikou Mwoi dated 3/6/2017. The applicant's grounds for the application are that the plaintiff is not the registered owner of the suit land parcel which is registered in the name of **Katikomor Group Ranch**, that the plaintiff did not prove his case on a balance of probabilities since he did not have a prima facie case as the registered proprietor, that there is new evidence that warrants this case to be reopened and heard afresh in the best interests of justice and that the application has been brought expeditiously and without undue delay.
3. The plaintiff has opposed the defendant's application vide his replying affidavit dated 7/7/2017. In that affidavit he avers that the application is devoid of merit, is meant to obstruct the execution of the decree herein, that he had pleaded in his amended plaint that he was a member of the Katikomor Group Ranch which is the owner of the land comprised in **West Pokot/Katikomor/1** measuring **572 Ha**; that the amended plaint stated that he owned **100 acres** thereof; out of which he sold **20 acres** to the applicant who failed to honour the agreement, and that no Land Control Board Consent was sought for the transaction due to breach on the part of the applicant herein.
4. The plaintiff states further that his second prayer in that plaint was for a declaration that the defendant is a trespasser in the plaintiff's 20 acres and that the exhibits produced at the hearing included a copy of the title deed to the land owned by the Group Ranch.
5. The plaintiff contends that contrary to what the defendant is now urging, the Certificate of Title and the Certificate of Incorporation of the Group Ranch would not comprise new evidence to warrant a review since the said documents were produced in court by the plaintiff at the hearing.
6. Further it is the plaintiff's case that the judgment never stated that the land comprised in **West Pokot/Katikomor/1** measures **20 acres** and that therefore there is no error whatsoever in the judgement.
7. It is the plaintiff's averment that the defendant has remained quiet concerning his failure to pay the balance of the purchase price amounting to **Kshs.900,000/=** and that the court declared that sale transaction null and void for want of a Land Control Board Consent.
8. The said affidavit also recalls that the applicant attempted to set aside the *ex parte* judgment of the court and on 3/4/2017 the court dismissed the application for setting aside, stating that the defence filed by the applicant raised no triable issues.
9. I have considered the application before me. I do not find that there is any new evidence to warrant a review of the court's judgment. What the applicant should have done is to appeal against the judgment of this court which he has not done. There is indeed as stated by the plaintiff a previous application to set aside that application being of a different nature from this one, was dealt with on its merits.
10. One of the cardinal rules is that an application for review must be presented before court without undue delay. The application now before this court was filed on 5/6/2017 while the judgment was delivered on 7/11/2016. No doubt the applicant appears to be trying to luck as to whichever grounds, whether on review or on setting aside, can save him from the judgment that hangs over his head.

11. However I must state and not without any sympathy for him that his remedy lies elsewhere, for in this application too he has failed to convince this court that the judgment issued by this court should be reviewed.

The upshot of the above is that the defendant's application dated 3/6/2017 is hereby dismissed. Each party shall bear their own costs of the application. The interim orders granted pursuant to the application are hereby revoked.

Dated, signed and delivered at Kitale on this **28<sup>th</sup>** day of **February, 2018**.

**MWANGI NJOROGI**

**JUDGE**

**28/2/2018**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty/Collins

N/A for the parties

**COURT**

Ruling read in open in the absence of the parties and of their advocates.

**MWANGI NJOROGI**

**JUDGE**

**28/2/2018**