



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 387 OF 2013**

ZABLON ADALO OGANGO.....PLAINTIFF

VERSUS

ALICE MUSIMBI.....1<sup>ST</sup> DEFENDANT

THE CHAIRMAN, LAND DISPUTES TRIUBUNAL, KAPSABET.....2<sup>ND</sup> DEFENDANT

THE LANDS REGISTRAR, NANDI COUNTY.....3<sup>RD</sup> DEFENDANT

THE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT

**RULING**

The applicant, Judgment debtor *Alice Musimbi Chiveli* has come to court vide application dated 14.2.2018 praying for orders that the honourable court does order for review of its order pursuant to the judgment dated 25.1.2018 and substitute it with an order allowing the 1<sup>st</sup> defendant's claim. The reasons for the application are given thus, that the applicant is the registered owner of the whole of the suit land and that she is aggrieved by the decision made by the court. The plaintiff filed grounds of opposition stating that the applicant has raised no new issues or material facts to enable the court to review. He states that Samson Kipkoech Murei is not a party and did not participate in the suit and the application itself is incompetent.

I have considered the application and the brief submissions of parties and do find that Mr. Samson Kipkosgei Murei has been unprocedurally enjoined in this matter and therefore, his name is hereby struck out. That the application raises no **new and important matter or evidence** at all contrary to the expectation of provisions of Rule 45 of the Civil Procedure Rules, 2010 that provides

**“(45) (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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”**

The applicant has not demonstrated to this court that that there is **mistake or error apparent on the face of the record, or any other sufficient reason.**

This legal position flows from Section 80 of the Civil Procedure Act which gives a Court power to review its own order where an appeal has not been preferred against its order for sufficient cause.

I have looked at the application and do find there is no sufficient cause for review and that the applicant intends to re-agitate the matter that has already been determined and therefore to have a second bite at the cherry so to speak. This court cannot preside over an appeal on its own decision as it does not possess such jurisdiction. The application is otherwise not merited and is dismissed with costs.

**Dated and delivered at Eldoret this 11<sup>th</sup> day of June, 2018.**

**A. OMBWAYO**

**JUDGE**