



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. MISC. APPLN. NO. 193 OF 2012**

**ROBERT MULI MATOLO ..... APPLICANT**

**VERSUS**

**ROBERT MUTHIANI MULI ..... 1<sup>ST</sup> INTERESTED PARTY**

**PETER NZESYA MAITHYA ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. In the Application dated 24<sup>th</sup> March, 2014, the Applicant is seeking for an order to review the orders of the court of 21<sup>st</sup> February, 2014 and set aside the said orders.

2. The Application is based on the grounds that the Applicant has discovered new and important evidence which after the exercise of due diligence was not within his knowledge; that there is an error apparent on the face of the record and that the Application should be allowed.

3. The Applicant has deponed that prior to applying for leave to institute Judicial Review proceedings, he had sought but failed to obtain the file in respect to the suit land from the land's office; that he has since obtained the search which confirms that a restriction had been registered against the suit land on 9<sup>th</sup> November, 2012 and that the restriction confirms that indeed the Appeal to the Minister existed.

4. The Applicant finally deponed that the court relied on contentious matters in determining the Preliminary Objection; that the court relied on the provisions of the Civil Procedure Act in determining a matter that is purely under the Land adjudication Act and that the court failed to appreciate that the Application was at the leave stage.

5. In response, the 1<sup>st</sup> Interested Party deponed that the court only dealt with issues of law and not facts; that the issue of legal representation in the alleged Minister's Appeal was a legal matter and that there is no discovery of new and important evidence since there is no evidence to show that the file at the land's office was missing.

6. The 1<sup>st</sup> Applicant deponed that the issues raised in the Application are not for review but for Appeal and that in any event, the Applicant has not annexed a Certificate of Search on his Application.

7. The Applicant is seeking to review the Ruling of the court that was delivered on 21<sup>st</sup> February, 2014. The Ruling arose from the Applicant's Chamber Summons dated 27<sup>th</sup> August, 2012 in which he was seeking for leave to apply for an order of certiorari and prohibition in respect to the decision of the Director of Land Adjudication and Settlement dated 2<sup>nd</sup> August, 2012. The Applicant also sought for the said leave to operate as a stay of the decision of the Director of Land Adjudication and Settlement. The Interested Parties filed a Preliminary Objection in which they opposed the Application.

8. The Applicant's Application was struck out principally on the ground that the Applicant did not apply to be substituted as a party in the Appeal pending before the Minister to represent the Estate of the deceased persons in respect of whom he obtained the letters of administration. The court held as follows:

***“On the facts and circumstances of this matter, I am persuaded that the Applicant lacks a locus standi to bring this Application and I would uphold the Preliminary Objection on that ground.”***

9. The Applicant did not file an Appeal against the decision of the court. Indeed, it cannot lie in the mouth of the Applicant to state that the court was wrong to rely on documentary evidence to arrive at its decision. That is an issue to be handled by the Court of Appeal and not by way of review by the trial court. As I have stated above, the Application was struck out principally on the basis that the Applicant did not have the *locus standi* to prosecute the Appeal before the Minister. Consequently, it does not matter that he has now come across some documents at the land's office which would shed light on the dispute.

10. If the evidence the Applicant has obtained does not relate to his capacity to sue or be sued, then the issues he is raising can only be handled by the appellate court.

11. For those reasons, I dismiss the Application dated 24<sup>th</sup> March, 2014 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20<sup>TH</sup> DAY OF JULY, 2018.**

**O.A. ANGOTE**

JUDGE