



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC JUDICIAL REVIEW 37 OF 2010

REPUBLIC.....APPLICANT

VERSUS

CHAIRMAN LAND DISPUTES TRIBUNAL

MERU CENTRAL DISTRICT.....1ST RESPONDENT

KIMWERE MUTUOTA.....INTERESTED PARTY

DIRECTOR OF LAND

ADJUDICATION AND SETTLEMENT.....2ND INTERESTED PARTY

AND

EXPARTE.....ZACHARIA MPUTHIA M'ITHIRAI

RULING

1. Judgment herein was delivered on 22.6.2018. Thereafter, the exparte applicant filed a notice of motion dated 23.8.2018 where he is seeking a review and/or the setting aside of the said judgment.
2. When the application came up for hearing on 26.9.2018, Mr. Kiongo for the respondent averred that the application is not properly before the court as applicant ought to have lodged an appeal and not seek a review. Mr. Muthamia, counsel for the interested party concurred with the sentiments of the respondent.
3. I have looked at the notice of motion, it appears that applicant wants to adduce more evidence after judgment has been delivered. A perusal of the judgment of 12.6.2018 indicates that the court considered the annexures which had been availed by the exparte applicant. These were three namely ZMT – 01, ZMT – 02 and ZMT – 03 which are mentioned in paragraph 5, 8 and 11 of the affidavit of Zachary Mputhia Mithari. So where is ZMT – 04 coming from? There is no basis for adducing evidence after Judgment has been delivered.
4. The other issue raised by the applicant is that the matter is Res-Judicata. That is an issue which the court dealt with in the Judgment.
5. I concur with the sentiments of the respondent and the interested party that this application is not properly before the court and that applicant ought to have appealed if he was dissatisfied. The application dated 22.8.2018 is hence struck out with costs to respondent and the interested party.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 31ST DAY OF OCTOBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Exparte applicant present

HON. LUCY. N. MBUGUA

