



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO.201 OF 2006**

**JANE WANJIRU GITHINJI.....PLAINTIFF**

**=VERSUS=**

**MARY NJERI KABOCHA.....1<sup>ST</sup> DEFENDANT**

**JANE MUMBI KABOCHA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of notice of motion dated 22<sup>nd</sup> February 2018. The application is brought by the Defendants/Applicants and it seeks orders staying Thika ELC case No.1 of 2018 and review and setting aside of judgement delivered herein on 22<sup>nd</sup> September 2017.

2. The applicants contend that the Judge who heard the case and delivered judgement was misled by the evidence of the plaintiff/respondent and thus granted the suit property to the respondent. They further contend that the respondent has filed proceedings in the Environment and Land Court in Thika in which she is seeking eviction orders against them.

3. The respondent has opposed the applicants' application based on a replying affidavit sworn on 28<sup>th</sup> March 2018. The respondent states that the applicants' application is an abuse of the process of Court. The applicants moved to court to file the present application after the respondent filed for eviction in Thika Environment and Land Court. She contends that there is no ground for review which has been set out by the applicants. The applicants are only out to re-open this case and adduce additional evidence which cannot be allowed by this court. If the applicants are of the view that the court did not consider the evidence adduced before the court, then that is not a ground for review but one for appeal to the court of appeal.

4. Parties in this matter had agreed to put in written submissions. This was on 23<sup>rd</sup> April 2018. The respondent filed her submissions on 25<sup>th</sup> June 2018. As at 18<sup>th</sup> July 2018 when the ruling date was set, the applicants had not filed their submissions. Even as at the time of writing this ruling, the applicants' submissions had not been received. I have considered the application by the applicant, the opposition thereto by the respondent and the submissions by the respondent. The only issue for determination is whether the applicants have met the threshold for review. The first prayer by the applicants for stay has already been spent as there was no stay of the Thika ELC case was granted pending the determination of the application.

5. The grounds for review were well summarised by the court of Appeal in the case of **Tokesi Mambili & Others Vs Simioni Litsanga** as follows:-

***“ In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason. Where the application is based on sufficient reason it is for the court to exercise its discretion”.***

6. The other important requirement for an application for review is that it has to be brought without unreasonable delay. In the instant case, the applicants have not indicated on which grounds they are seeking review. In other words, the application does not fall under any of the grounds for review. The only reason the applicants seem to have is that the judge was misled by the respondent. With respect to the applicants, this is not a ground for review. It has been held that a point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal. See the case of **Abasi Belinda Vs Fredrick Kangwamu & Another.**

7. The applicants had already filed a notice of appeal on 28<sup>th</sup> September 2017. The filing of this application after five months is not only an

abuse of the process of the court but also brought too late in the day which delay is not explained. I find no merit in this application which is hereby dismissed with costs to the respondent.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 18<sup>th</sup> day of October, 2018**

**E.O.OBAGA**

**JUDGE**

In the presence of:

Mr Masinde for Mr Mungai for Plaintiff

Mr Ochieng for Mr Kinuthia for defendant

Court Assistant : Hilda

**E.O. OBAGA**

**JUDGE**