



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 132 OF 2007

REHEMA RAIBUNI1ST PLAINTIFF
JANE MPINDA.....2ND PLAINTIFF
MARY ALIMA RAIBUNI3RD PLAINTIFF
ALI KITHINJI4TH PLAINTIFF
ABDALLA MANYARA5TH PLAINTIFF
JOSHUA NGATU INTERESTED PARTY

VERSUS

MOHAMED IQBAL ABDUL KARIM1ST DEFENDANT
RAMJI DEVJI PATEL2ND DEFENDANT
MEHBOOB SALE MOHAMED HAJI 3RD DEFENDANT
VALJI HIRJI SENGHANI.....4TH DEFENDANT

RULING

1. The notice of motion filed on 18.5.2018 is brought under order 45 of the civil procedure rules section 1 A, 1B and 3 A of the civil procedure act and article 159 of the constitution. Applicant is seeking for an order of review of the court's ruling delivered on 18.4.2018. He desires that his application which was dismissed be reinstated and the same be heard on merits.
2. The grounds in support of the application are that there are mistakes and error apparent on the face of the record, that the court misapprehended the facts on the face of the record, that the court did not put into consideration the facts as deponed to by the applicant in his affidavit and that applicant feels aggrieved by the ruling of 18.4.2018. Applicant has further filed a supporting affidavit.
3. The application was opposed by plaintiffs through the affidavit of 2nd plaintiff. Defendants too have opposed the application through the affidavit of the 2nd defendant.
4. For an applicant to succeed under order 45 of the civil procedure act he must satisfy the court that there is discovery of new and important matter, or that there was mistake or error apparent on the face of the record or for any other sufficient reason.
5. I have considered all the argument raised herein. It is clear that applicant was aggrieved by the courts ruling. He has admitted that much. He has averred that the court misapprehended the facts and the court did not put into consideration the facts put forth by the applicant.
6. The application is certainly an appeal in disguise. This court cannot resume the process of determining the previous application all over again simply because the court cannot sit in an appellate forum in respect of its ruling.
7. I therefore find that the application is unmerited. The same is dismissed with costs to respondents (plaintiffs and respondents).
8. The case having been marked as settled on 22.5.2018, then I direct that this file be marked as closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 28th NOVEMBER, 2018 IN THE PRESENCE OF:-

C/A: Kananu

Omari for defendant

Rimita C. for Karanja holding brief for applicants

Kiome for applicant

Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE