



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 138 OF 2013

ANNE NALIKA.....1ST PLAINTIFF

EDWARD F. KHAOYA.....2ND PLAINTIFF

COL. TOM WANAMBISI.....3RD PLAINTIFF

DAWSON MUDENYO.....4TH PLAINTIFF

(Being officials of KITALE FAMILY HOUSE OF HOPE)

VERSUS

BENSON NYONGESA WAMALWA *(Trustee)*

COVENANT OF HOLINESS MINISTRIES.....DEFENDANT

RULING

1. The application dated **16/7/2018** seeks the following orders:-

(1) Restitution of the status before judgment was delivered.

(2) Stay of execution of judgment dated 1st February, 2018.

(3) Permanent prohibition, barring the plaintiffs themselves, their agents or any other party from encroaching, interfering with the suit land or trespassing.

2. The application is supported by the sworn affidavit of the defendant/applicant dated **16/7/2018**. The grounds upon which the application is sought are that the defendant was dissatisfied with the judgment of this court dated **1/2/2018**; that the trial court applied a wide discretion in revoking the title deed of the defendant duly given by the Government of Kenya without involving the honourable Attorney General as mandated by **Cap. 40**; that the plaintiffs were as false as they were malicious hence scandalous; that the honourable court cannot be used by the plaintiffs to acquire property and earnings from what are not theirs; that the defendants supporting documents are self-explanatory and incontrovertible; that the defendant acquired the suitland duly enjoyed a quiet and peaceful living in possession of the suitland from the time of purchase of **13/11/2007** to the date of the said judgment on **1/2/2018**; that during the said period (**2007-2018** both years included) the purported plaintiffs were aware that the suitland belonged to the defendant absolutely; that the 2nd plaintiff was a mere witness in the purchase agreement dated **13/11/2007** lacking capacity to lay a claim of ownership of the suitland; that 1st, 3rd and 4th plaintiffs were strangers as they were ambiguous to the suitland; that the plaintiffs lacked capacity and documents supporting their false claims; that natural justice demands that the honourable court cannot be a judge in its own cause (this is an unclear statement); and that without prejudice this review be done transparently, independently and fairly to all as per **Article 50** of the Constitution of Kenya.

3. The defendant filed his written submissions on **15/8/2018**. I have perused the court record and found that there is no response and there are no submissions by the plaintiffs.

4. The main grievance of the applicant in the instant application, as far as this court can decipher it from the massive foliage of writings the applicant presents, is that the Attorney General was not a party to the proceedings. There was therefore in the eyes of the applicant no genuine claimant to the suit land. For this reason it is sought by the applicant/defendant that the situation regarding the suit land do revert to that status that existed prior to the judgment, that the judgment be set aside, and a permanent order be issued barring the plaintiffs by themselves and their agents from interfering with the suit land. It is alleged that unless the orders sought are issued the applicant would suffer irreparably.

5. In my view the absence of the Attorney General in the proceedings that gave rise to the judgment sought to be reviewed is not a sufficient ground for review. The applicant has not demonstrated otherwise, or that if the Attorney General had been made a party the court may have arrived at different findings.

6. With respect I have examined the documents presented by the plaintiff and I find no good grounds upon which to issue an order setting aside the judgment issued by this court on **1/2/2018**, or to reinstate the situation to what it was before the judgment which in my view are one and the same thing.

7. In my view the application has come too late in the day to pass for a proper application for review. It is presented in an even worse manner than the application that this court merely struck out for want of certain evidence vide a ruling dated **31/5/2018** which application seemed to recognize the fact that the suit land is three acres and the plaintiff's claim was for **2 acres** only. In that application the defendant herein claimed the balance comprising of **1 acre** and the court only struck out the application on technicalities, meaning that it can be competently brought again once what the court considers to be the proper evidence is presented. It is clear that the plaintiff never read and fully understood the ruling of this court in that application hence this application or that he has simply decided to ignore it.

8. In the light of what is stated in the application dated **5/3/2018** and the ruling striking it out, I find the application dated **16/7/2018** to be vexatious, frivolous and lacking in merit.

9. I therefore strike it out entirely.

10. Since the application was not opposed, there will be no order as to costs.

Dated, signed and delivered at Kitale on this 14th day of November 2018.

MWANGI NJOROGE

JUDGE