



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

E.L.C. SUIT NO. 646 OF 2014

ASHMI INVESTMENT LIMITED.....PLAINTIFF

VERSUS

RIAKINA LIMITED.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

RULING

The 2nd Defendant through the application dated 17/11/2017 seeks to have this court review its judgment delivered on 25/9/2017 and make a finding that the 1st Defendant did not make payment of Kshs. 240, 563 as contained in receipt number E774210 of 15/10/2001. The application is made on the grounds that the court found in its judgement that the 1st Defendant had paid the sums indicated on the letters of allotment in April and October 2001. The 2nd Defendant obtained further information that the receipts relied on by the 1st Defendant in respect of the payment of stand premium of Kshs. 240,563 was not genuine and that the Ministry of Lands and Physical Planning confirmed that the receipt did not appear in the Ministry's analysis book of 1/11/2001.

The 2nd Defendant claims that the court failed to take into account the fact that the suit property had been registered in favour of the Plaintiff and a certificate of lease for L.R. No. 29957 issued on 4/3/2015.

The court notes that in paragraph 14 of the judgement it observed that the Plaintiff went ahead to process the title deed while this suit was pending in court contrary to the doctrine of *lis pendens*.

The application is supported by the affidavit of Zachariah Ndege, a Chief Land Administration Officer working for the 2nd Plaintiff. The 1st Defendant's director swore the replying affidavit in support of the application and urged the court to allow the application. The 1st Defendant filed a replying affidavit and opposed the application.

The issue for determination is whether the court should grant the orders sought in the application. Under Order 45 Rule 1 (b) of the Civil Procedure Rules, a person aggrieved by a decree or order from which no appeal is allowed and who from the discovery of new and important evidence, which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made; or on account of some mistake or error apparent on the face of the record; or for any other sufficient reason may apply for review of a judgement to the court which passed the decree. The 2nd Defendant called Silas Kiogora Mburugu, its Principal Land Administration Officer to give evidence at the hearing of the matter. Mr. Mburugu took the court through the process of payment and processing of a letter of allotment.

It is clear from the 2nd Defendant's letter of 2/10/2017 that the 2nd Defendant only sought to confirm whether the receipt in dispute was genuine after the court had entered judgement. It has not been shown that the 2nd Defendant did not have access to the information it relies on for review of the judgement after exercising due diligence at the time the case was heard. It has also not been shown that the information could not be produced during the hearing.

The court has considered the matter and finds no merit in the application. It is dismissed with costs to the 1st Defendant.

Dated and delivered at Nairobi this 13th day of November 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Ndege for the Plaintiff

Mr. G. Kimani holding brief for Mr. Onyango for the 1st Defendant

Mr. A.N. Wahome for the 2nd Defendant

Mr. V. Owuor- Court Assistant