



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC CASE NO. 11 OF 2017**

**REGISTERED TRUSTEES LEGIONS OF MARY.....PLAINTIFF**

**VERSUS**

**MARY TIOKO EKUWOM.....DEFENDANT**

**RULING**

1. The plaintiff filed an application dated **8<sup>th</sup> October, 2018** and filed in court on the same date seeking that this honourable court be pleased to review and or vary its judgment dated and delivered on **19<sup>th</sup> September, 2018** and orders made therein. It also pray for costs of this application be provided for.
2. The grounds upon which the application is made are contained at the foot of the application. They are that the court dismissed the plaintiff suit on the ground that there was a discrepancy between the name of the allottee in the letter of allotment and the plaintiff/applicant; that the applicant has found new evidence from the Lands Office of the County government of Turkana that was not available at the time of the trial with all due diligence and that a Physical Planning Map indicating the position of the plot in issue has also become available.
3. In the supporting affidavit it is stated by the deponent that before the judgement the applicant did not appreciate the apparent discrepancy in its letter of allotment with regard to plot **221 Nakwamekwi in Lodwar**; that the St. Monica Bethlehem is one of the churches of Legion of Mary in Turkana; that the County Government of Turkana on **27/8/2018** clarified that Plot No 221 belongs to the plaintiff/applicant; that the respondent was awarded costs despite not having appeared or filed a defence.
4. I have examined the exhibit marked "**PEE 1A**" attached to the supporting affidavit. It is a letter from the Land Administrator Turkana Central sub-county stating that Legion Maria of African Church Mission St. Monica Bethlehem owned the suit land measuring 2 acres.
5. One of the conditions for the grant of an order of review is that the evidence purported to be new was not available at the time of the trial or could not with all due diligent have been obtained by the party seeking review orders.
6. I have examined the purported new evidence comprised in "**Exhibit PEE1a**" and "**Exhibit PEE1b**" and in my view these were documents that could have been easily obtained by the plaintiff for production at the hearing of the suit by witnesses competent to do that.
7. Furthermore reviewing the judgment on the basis of a document that has not been produced at the trial by a witness such **exhibits marked "PEE1a" and "PEE1b"** may make a mockery of the legal process. This court can never truly establish at the review stage as to where the exhibits truly emanated from.
8. Besides I have pored over the purported map **Exhibit "PEE1a"** and found no plot bearing the number 221 that being the number of the plot claimed by the plaintiff.
9. Any grant application for review by a party who may appear to attempt to sidestep the recognized methods of proof of his claim in litigation must be avoided lest the court grant him a judgment which he would not have otherwise obtained had he been compelled to call evidence in the normal manner.
10. The makers of the documents attached as exhibits were not called to produce them. The court has no basis for allowing them in the application for review.
11. No orders of setting aside of the entire judgment has been sought. The court had observed in its judgment dated 19/9/2018 that it is not convinced the plaint contained any justiciable cause of action.
12. Save for the order regarding the payment of costs the application has no merit.

13. I grant the application only to the extent that the judgment is hereby review to reflect that there will be no orders as to costs.

It is so ordered.

**Dated, signed and delivered at Kitale on this 3<sup>rd</sup> day of December, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**3/12/2018**

Coram:

Before -Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for applicant

N/A for respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**3/12/2018**