



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

CIVIL SUIT NO. 87 OF 2005

HENRY MURIIRA KIRUBUA & ANOTHER.....PLAINTIFF

VERSUS

LUCIA NGITI & 4 OTHERS.....DEFENDANT

R U L I N G

1. This ruling is in respect of the application dated 02:12:15, where applicant prays that :-

- The Judgment entered on 12:11:15 be set aside.
- The Court to find that there is no contradiction at all in the affidavits of service filed relating to service effected on 21:08:2014, and 22:10:15
- The Court to find that there is an apparent error on the face of the record.

2. In support of the application are grounds set out in the affidavit of Solomon Mpekethu, the 2nd Plaintiff who avers that the service of 22:19:15 was with regard to the 2nd Defendant only (Paul Riingu) and that at no time did the process server state that he had effected service upon 4th and 5th Defendant in October 2015. He also avers that in his statement filed on 71.10.15, he had indicated that the 4th Defendant died in September 2015 while 5th Defendant had voluntarily left the suit premises. Applicant therefor pray that the Judgment be reviewed and set aside.

Under order 45 rule 1 of the Civil Procedure Rules:-

"any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred or by a decree or order from which no appeal is allowed.....on account of same mistake or error opponent on the face of recordmay apply for a Review of the Judgment to the Court which passed the decree....."

3. In ODUNGA'S DIGEST ON CIVIL CASE LAW AND PROCEDURE VOL. IV (on wrongful dismissal) , it is stated that:-

"there are no limits or restrictions on the Judge's discretion except that if he does vary the Judgment, he does so on terms that are JUST".

4. This Court has perused the records and I find that the contents of the return of service in question are entirely captured in the body of the Judgment. In paragraph 2 of the said return of service, Joseph Kithinji states that " on 27th July, 2015, I received court hearing notice dated 22:07:15 That hearing

Notice read as follows:-

"TAKE NOTICE that this case has been fixed for hearing on 12:10:15" Dated at Meru this 22nd day of July, 2015".

5. This is Return of Service is the one where the Process Server stated that he served 2nd Defendant along with Kinyua M'Ngiti (4th Defendant) and Ciontungu M'Ngiti, 5th Defendant.

6. The contents of the aforementioned Return of Service is still at variance with the testimony of 2nd Plaintiff who on 29:10:15 stated therein:-

"we have sued 5 people some of these people have died. The only person alive is Paul Riungu M'ingiti, the second defendant."

7. The Judge was not dealing with the Return of Service of 21:08:2014 or that of 22:10:15".

8. This Court is a Court of law as much as it is a Court of record. The testimony of PW1 remains at variance with the Return of Service in respect of the hearing notice dated 22:07:15.

9. In the circumstances, I find that the application for review is unmerited . The application is hereby dismissed.

DELIVERED, DATED AND SIGNED AT MERU THIS 12TH DAY OF JULY, 2017 IN THE PRESENCE OF:

C:A Janet

Parties absent

HON. L. N. MBUGUA

JUDGE