



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

JR MISC 17 OF 2014

**IN THE MATTER OF AN APPLICATION BY MICHAEL GICHOVI NJAGI TO APPLY FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI AGAINST THE ACTING SENIOR
RESIDENT MAGISTRATE J.P. NANDI RUNYENJES**

AND

**IN THE MATTER OF A DECREE DATED THE 19TH DECEMBER 2013 IN RUNYENJES
PRINCIPAL MAGISTRATE'S COURT NO. 64 OF 2013 FELISTA GATHONI NJERU VERSUS
MICHAEL GICOVI NJAGI**

REPUBLIC OF KENYA.....1ST PLAINTIFF

***EX-PARTE* MICHAEL GICOVI NJAGI**

VERSUS

J.P. NANDI (ACTING RESIDENT

MAGISTRATE RUNYENJES).....RESPONDENT

RULING

1. According to the record, judgement was delivered by the Hon Justice Boaz Olao on 11th March 2016 in which he dismissed the Applicant's application for judicial review. The Applicant thereupon filed an application dated 21st March 2016 seeking to review and set aside the said judgement on the basis that he was dissatisfied with it.
2. The Hon Justice Boaz Olao considered the said application for review and delivered a ruling dated 19th May 2017 dismissing the said application for review. The court found that the judgement delivered on 11th March 2016 was a regular judgement having been made upon a full hearing of the suit in which both parties were represented. The court also found that the Applicant had not established any of the grounds for review of a judgement or decree set out in Order 45 of the Civil Procedure Rules and advised the Defendant to appeal the said judgement if he was aggrieved by it.
3. The Applicant did not appeal either against the judgement to 11th March 2016 or the ruling of 19th May 2017. Instead, he filed a fresh application dated 24th July 2017 in which he stated that he was dissatisfied with the ruling of 19th May 2017 and wanted to be given a chance to argue his earlier application.
4. The main ground advanced by the Applicant was that he was absent during the hearing of his

application for review and that he was never served with a hearing notice. The said application was supported by the Applicant's own affidavit sworn on 24th July 2017 in which he stated that at the material time when his application for review was decided, he was serving a prison sentence at Embu G.K prison. He attached a certificate of imprisonment which indicated that was in prison between 23rd February 2017 and 23rd June 2017.

5. The said application was also supported by a further supporting affidavit sworn by the Applicant's father on 19th September 2017 which dealt with the merits of the main case. He stated that he was the previous owner of the suit property which he transferred to the Applicant in 2003. He wanted the interested parties to be restrained from interfering with the suit property.

6. The interested parties opposed the said application on the basis of the grounds of opposition dated and filed on 21st August 2017 and a replying affidavit sworn and filed on 19th September 2017. It was the case of the interested parties that the Applicant's said application of 24th July 2017 was bad in law and lacking in merit. The interested parties were of the view that the earlier applications were dismissed on merit and that no legitimate grounds for review had been established by the applicant. They urged the court to dismiss the said application.

7. The said application was listed for hearing on 3rd October 2017 when the applicant prosecuted his application orally whereas Mr Kahuthu opposed the same on behalf of the interested parties.

8. The applicant urged the court to reopen his earlier application for review on the basis that he was not heard and that the ruling was delivered in his absence. He relied upon the certificate of imprisonment attached to his supporting affidavit and urged the court to allow his application.

9. The interested parties submitted that the Applicant fully participated in his earlier application for review and even filed written submissions. It was only the ruling which was delivered in his absence. Mr Kahuthu therefore urged the court to dismiss the Applicant's notice of motion dated 24th July 2017 since it had no merit.

10. The court has considered the Applicant's said application and the submissions of the parties herein. The court has also perused the record of proceedings herein. Although the Applicant has not specified the provisions of the law upon which the application is based and the nature of relief he is seeking with any reasonable precision, it is clear from the record that is aggrieved by the ruling of 19th May 2017 hence he wants a review thereof.

11. The court has noted that the Applicant filed a notice of motion dated 21st March 2016 on 22nd March 2016 in person seeking a review and setting aside of the judgement dated 11th March 2016, even though he had an advocate on record. He then filed written submissions on 20th June 2016 and later on amended submissions on 4th July 2016. The interested parties filed their written submissions in opposition to the said application for review on 19th July 2016. The said application for review was determined vide the ruling of 19th May 2017.

12. It is, therefore, evident that the Applicant's imprisonment at Embu G.K. Prison between 23rd February 2017 and 23rd June 2017 did not prevent him from prosecuting his said application. He was able to file two sets of written submissions. What happened was that the ruling was delivered before he could be released from prison. In those circumstances, the Applicant has no basis for seeking to re-open the said application for review so that he may be heard thereon again.

13. The Applicant has also failed to demonstrate any of the grounds for review under **Order 45 of the Civil Procedure Rules**. It has not been demonstrated that there is an error apparent on the face of the record, or that there has been discovery of new and important evidence or any other sufficient reason to warrant a review. In my view, if the applicant was aggrieved by either the judgement of 11th March 2016

or the ruling of 19th May 2017, it was upon him to take steps to appeal against them. It is not permissible for him to seek to overturn those decisions through the back door.

14. The upshot of the foregoing is that the court finds no merit in the Applicant's notice of motion dated 24th July 2017 and the same is hereby dismissed with costs to the interested parties.

15. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **23RD** day of **NOVEMBER, 2017**

In the presence of the ex-parte applicant in person and the interested parties but in the absence of the Respondent.

Court clerk Njue/Leadys.

Y.M. ANGIMA

JUDGE

23.11.17