



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT OF KENYA**

**AT MALINDI**

**LAND CASE NO. 81 OF 2013**

**KAHASO SULUBU GURACHA.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**THETHE GURACHA.....DEFENDANTS/RESPONDENT**

**R U L I N G**

**Introduction**

1. On 20<sup>th</sup> September, 2013 I allowed the Plaintiff's Application for injunction. The Defendants have now filed an Application dated 5<sup>th</sup> November, 2013 seeking for the following orders;-
  - a. That this Honourable Court be pleased to review, vary, discharge or set aside the Ruling delivered on 20<sup>th</sup> September, 2013.
  - b. That the costs be in the cause.
2. The Application is premised on the grounds that the court allowed the Plaintiff's application for injunctive orders oblivious of the ramifications of their continued stay on the land notwithstanding that their relationship had irreparably soured.
3. The other grounds relied upon by the Defendant /Applicant is that the Ruling delved substantially on the issues that are to be prosecuted at the trial and more specifically the finding that the Plaintiff and her eight children are entitled to remain on the suit property.
4. In response, the Plaintiff/Respondent stated that it is not right for the Applicant to attack the Ruling of the court at this stage and that the court was alive to the oxygen principle when it delivered its Ruling. The Plaintiff/Respondent finally deponed that the Ruling was in respect to an application for an interlocutory injunction whose success is determined by the court once it is satisfied of the existence of a prima facie case.
5. The Defendant filed his further affidavit in which he deponed that this court should review its Ruling on the basis that the Plaintiff has no locus standi to file the suit having withdrawn succession case No.8 of 2013.
6. The advocates for the Applicant and Respondent filed their written submissions which reiterated the averments made by their respective clients.

**Analysis and Findings:**

7. Order 45 of the Civil Procedure Rules provides that any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred may apply for a review of the decree or order.
8. The grounds upon which an order for review may be allowed is where a party discovers new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.
9. It would appear that the Defendant/Applicant has a problem with my interpretation on the applicable principles while granting an order of injunction. According to the Defendant/Applicant, the court, while delivering the Ruling of 20<sup>th</sup> September, 2013 “delved into substantial issues that will be prosecuted at the trial and more specifically the finding that the Plaintiff and her eight children are entitled to remain on the suit land”.
10. It is not in the province of this court to defend or justify the Rulings it makes. The court's mandate is to interpret the facts and the law as presented to it by parties. A party who is aggrieved with the manner in which the court interprets the law and the facts of the case has an option of filing an appeal in the Court of Appeal and not to call upon the court to review its decision on that basis.
11. In the case of **National Bank Ltd -Vs- Ndungu, Civil Appeal number 211 of 1996**, the Court of Appeal stated the law regarding review as follows:

**“A review may be granted wherever the Court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omissions must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provisions of law cannot be a ground for review.”**

12. The author of **Chittaley & Rao in the Code of Civil Procedure, 4<sup>th</sup> Edn. Vol. 1 page 3227** while explaining the distinction between a review and an appeal had this to say:

**“A point which may be a ground of appeal may not be a ground for an application for review. Thus an erroneous view of evidence or of law is no ground for a review though it may be good ground for an appeal.”**

13. I therefore do not agree with the argument by the Applicant that this Court should review its ruling because it applied the wrong principles while granting the injunctive orders on 20<sup>th</sup> December 2013.
14. In his Supplementary Affidavit, the Applicant deponed that the Respondent does not have the capacity to bring this suit having withdrawn the Application dated 14<sup>th</sup> February, 2013 in Ad litem Succession cause No.8 of 2013. The Defendant/Applicant attached the Notice of withdrawal dated 16<sup>th</sup> July, 2013 and filed on the same day.
15. The Defendant's/Applicant's argument, it would appear, is that he has now discovered new and important matters or evidence which, after the exercise of due diligence, was not within his knowledge while opposing the Application for injunctive orders.
16. While arguing the Application for injunction, the Plaintiff/Respondent annexed on her Supporting Affidavit limited grant ad litem issued by the High Court in Mombasa Probate and Administration Cause No.8 of 2013. The said limited grant was issued on 18<sup>th</sup> February, 2013.
17. What the Defendant/Applicant is now referring to as a withdrawal for an Application of limited letters of administration was filed in Malindi Ad litem succession cause No.8 of 2013. The said withdrawal has nothing to do with the limited grant that was issued by Justice Odero on 18<sup>th</sup> February, 2013 and which was the basis of filing the suit. The Application for review therefore does not have a basis.
18. In the circumstances and for the reasons I have given above, I dismiss the Defendant's/Applicant's

Application dated 5<sup>th</sup> November, 2013 with costs.

**Dated and Delivered in Malindi this 16<sup>th</sup> Day of May 2014**

**O. A. Angote**

**Judge**