



Bhanji & 2 others v Kassamali & another (Environment and Land Case Civil Suit E285 of 2021) [2024] KEELC 13363 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13363 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E285 OF 2021
LN MBUGUA, J
NOVEMBER 14, 2024**

BETWEEN

**MOYEZ SADRUDIN BHANJI 1ST PLAINTIFF
ZUBEDA SADRUDIN BHANJI 2ND PLAINTIFF
STEVE RUTO 3RD PLAINTIFF**

AND

**SULTAN ABDUL KASSAMALI 1ST DEFENDANT
NAJMA SULTAN KASSAMALI 2ND DEFENDANT**

RULING

1. Before me is the Plaintiff's Notice of Motion dated 22.5.2024 seeking an order for stay of execution of the certificate of taxation dated 1.12.2023 and all the consequential orders and that judgment be reviewed such that each party shall bear their own costs. The application is premised on the grounds on the face of the application and the supporting affidavit of the 1st plaintiff.
2. It is argued that the court has jurisdiction to review its own decision where there is discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant, on account of some mistake or error apparent on the face of the record or for any other sufficient reason.
3. It is argued that the suit was filed primarily to compel the defendant to cut down the hedge fence which was a health hazard, of which the said hedge fence was cut down during the trial, thus at the time of the judgment, the major substratum of the suit was non-existent.
4. The defendants opposes the application vide the replying affidavit of the 1st defendant dated 6.6.2024 where the claim of the plaintiffs is denied adding that if the substratum of the suit had been resolved,



then the plaintiffs could have withdrawn the suit, thus the judgment was delivered on merit. It is also argued that the application amounts to an appeal.

5. I have considered all the arguments raised herein. Judgment was delivered in this matter on 27.4.2023 in which the plaintiff's case was dismissed with costs to the defendants. The plaintiffs now pray that the order on costs be reviewed so that each party can bear their own costs of the suit.
6. The legal regime governing matters of review is anchored under the provisions of Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the *Civil Procedure Rules*. In the case of *Jeremiah Muku Methodist Church of Kenya Registered Trustees & Another* [2009] eKLR, the grounds for Review were summarized as;

“Firstly the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time the decree was passed or the order was made; secondly; on account of some mistake or error apparent on the face of the record, or thirdly; any other sufficient reason”.

7. The applicants contend that the hedge fence which was the major issue at the time of filing the suit had been cut, hence the substratum of the suit was majorly no longer there as at the time the judgment was delivered. However, that is an issue which goes into the merits of the judgment fit for appeal and not review. As such, I find that the application dated 22.5.2024 is not merited, the same is hereby dismissed with costs to the defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14th DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Okullo holding brief for Mwachoji for Plaintiff

Shah for Defendant

Court Assistant: Vena

