



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC MISC. APP NO. 16 OF 2013**

**JULIUS MASHA KALAMA.....APPLICANT**

**=VERSUS=**

**JOSEPH CHARO KITI.....RESPONDENT**

**R U L I N G**

**Introduction:**

1. These proceedings were commenced by way of a Miscellaneous Application. Indeed, it is the said Miscellaneous Application dated 14<sup>th</sup> November 2013 filed pursuant to the provisions of Order 42 Rule 6 that is before me. The Application is seeking for the following orders:

- (a) THAT there be a review of the ruling of this Honourable court made on 11<sup>th</sup> April 2014.**
- (b) THAT the Applicant be granted unconditional leave to appeal out of time.**
- (c) THAT the costs of this application be provided for.**

- 2. The Application is premised on the grounds that the Applicant has an arguable appeal; that if execution is not stayed, the Applicant will suffer irreparable loss and that the Applicant has been in occupation of the suit property for more than 30 years and he has tenants in the house that he constructed on the suit property.
- 3. In response, the Respondent has deponed that the Application is a non-starter and that this Court cannot grant the orders sought in the circumstances.
- 4. The Applicant's advocate filed his submissions which reiterated the averments in the Application.
- 5. The Respondent's advocate submitted that the Applicant has not satisfied the conditions set out in Order 45 Rule 1 of the Civil Procedure Rules for review.

**Analysis and findings:**

6. The substantive prayer in the Application is for review of my Ruling of 11<sup>th</sup> April 2014.
7. In the said Ruling, I dismissed the Applicant's Application dated 14<sup>th</sup> November 2013. In that Application, the Applicant had sought the leave of the court to file his appeal out of time and for stay of execution.
8. The grounds upon which the court may review its decision are provided for under Order 45 Rule 1 of the Civil Procedure Rules. Those conditions include: *the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any sufficient reason.*
9. The present application has just regurgitated what was in the Application of 14<sup>th</sup> November 2013. The Applicant has not satisfied any of the conditions required for review of an order.
10. For those reasons, I dismiss the Application dated 23<sup>rd</sup> April 2014 with costs.

**Dated and delivered in Malindi this 28<sup>th</sup> day of November, 2014.**

**O. A. Angote**

**Judge**



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