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Case Number:	Civil Suit 983 of 2005
Date Delivered:	19 Dec 2006
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Alnashir Ramazanali Magan Visram
Citation:	JOSEPH MWANGI MUNYUA & 3 OTHERS v GEORGE MWAI MBURU [2006] eKLR
Advocates:	-
Case Summary:	..
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

AT TH EHIGH COURT IN NAIROBI (MILIMANI LAW COURTS)

CIVIL SUIT 983 OF 2005

JOSEPH MWANGI MUNYUA & 3 OTHERS ………........… PLAINTIFF

VERSUS

GEORGE MWAI MBURU ……………......………….. DEFENDANT

RULING

This is an application for review under Order 44 of the Civil Procedure Rules, based on the ground that a new and important matter had since arisen, and for other sufficient reason.

On 1st December, 2005, this Court handed down a brief ruling restraining the Defendant from constructing a building on the suit plot (Buru Buru Phase 1, Block 74) until the hearing and determination of this suit. The Court found, in that Ruling, and at that time, that the Plaintiffs had made out a prima facie case with a probability of success, and were likely to suffer irreparable injury if restraining Orders were not issued. An additional reason for granting those Orders was that the Defendant had not demonstrated that he had the legal right to build on the suit plot (Block 74). Indeed, the letter of allocation exhibited by the Defendant related to Plot 73, and not 74.

The Defendant now says, in this application for review, that the "corrected" allocation letter to Plot 74 shows that the suit plot has been allocated to him giving him the right to build on the same. Indeed, he filed an application dated 21st July, 2006 for review, but the same was dismissed on technicality, in that the Order sought to be reviewed, had not been annexed to the application. The Respondents (Plaintiffs) to this application have submitted before this Court, that that application having been dismissed on 16th October, 2006, the present application is *res judicata*, and should be struck out. The Respondents are clearly wrong in that argument. The previous application was not heard and dismissed on merit, but simply on technicality for want of form and failure to annex the Order sought to be reviewed. Accordingly, I find that this application is not res judicata, and that Defendant is fully entitled to be heard on the same.

However, having said that, I do not find that there are sufficient new grounds or evidence advanced to review the Ruling and Orders of this Court made on 1st December, 2005. That Ruling was not based only on the omission by the Defendant to annex the letter of allocation to the suit land. It was based on several other factors, and reasons that are outlined in the said Ruling. I see no reason to review the same at this time. I believe this is a proper case to go to full trial before a final decision is made to "allow" the Defendant to proceed with his construction on the disputed plot, especially in the face of strong arguments presented against such construction.

Accordingly, I dismiss this application with costs to the Respondents.

Dated and delivered at Nairobi this 19th day of December, 2006.

ALNASHIR VISRAM

JUDGE