



REPUBLIC OF KENYA



Siamito v Nkaayia (Suing as Next of Kin of Nkaayia Loontareto alias Nkaayia Ole Kedoki) & 2 others (Environment and Land Appeal E042 of 2022) [2025] KEELC 209 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E042 OF 2022
LC KOMINGOI, J
JANUARY 30, 2025**

BETWEEN

LESHOKO NKONENE SIAMITO APPLICANT

AND

KANYET ENE NKAAYIA (SUING AS NEXT OF KIN OF NKAAYIA LOONTARETO ALIAS NKAAYIA OLE KEDOKI) 1ST RESPONDENT

CHAIRMAN MAILUA GROUP RANCH 2ND RESPONDENT

LAND REGISTRAR KAJIADO 3RD RESPONDENT

RULING

1. This is the Notice of Motion dated 26th March 2024 brought under; (Section 3A & 80 of the [Civil Procedure Act](#), Cap 21, Order 45, Rules (1-3) of the Civil Procedure Rules 2010)
2. It seeks orders;
 1. Spent.
 2. That this Honourable court be pleased to review and/or vary it's Judgement dated 14th March, 2024.
 3. That there be stay of execution of the Judgement and all consequential orders of Justice L. Komingoi, in Kajiado ELC Appeal No. E042 of 2022 dated and delivered on 14th March 2024.
 4. That costs of this application be in cause.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 9.



4. The Application is supported by the affidavit of Leshoko Nkonene Siamito, the Appellant/Applicant, sworn on the 26th March 2024.
5. The Application is opposed.
There is a Replying Affidavit sworn by Kanyet Ene Nkaayia, the 1st Respondent, sworn on the 29th April 2024.
6. The Application was canvassed by written submissions.

The Appellant's Submissions.

7. They are dated 26th September 2024.
They raise four issues for consideration;
 - a. Whether there was a valid agreement between the Appellant/Applicant and the 1st Respondent.
 - b. Whether the 1st Respondent legitimately sold and therefore transfer the share interest property to the Appellant/Applicant thus having an indefeasible title.
 - c. Whether there was consideration.
 - d. Whether the Appellant/Applicant is entitled to a refund by the 1st Respondent of Kshs.330,000/= and an interest of 20%.
8. Counsel relied on Order 45 rule 1 of the Civil Procedure Rules, Article 159 (2) of *the Constitution* and Section 3(3) of the *Law of Contract Act* to submit that the Appellant and the 1st Respondent entered into a valid written sale agreement dated 28th January 2011, which was properly executed by both parties and witnessed by one Nkoikai Ole Keduken Ndetete.
He also put forward the case of William Muthee Muthami Vs. Bank of Baroda (2014) eKLR.
9. Counsel also submitted that Sections 32 and 33 of the *Law of Succession Act* provides for the excluded property and the law applicable. Further that the property which is agricultural land belonged to a group Ranch and the deceased was only entitled to a share and not a specific identifiable property. That the 1st Respondent therefore had capacity to sell her deceased husband's share under customary law.
10. Counsel further submitted that even though the Appellant does not have proof of payment of consideration, this should not be the basis of disregarding the agreement dated 28th January 2011.
11. Counsel submitted that this Honourable Court ought to review its decision delivered on 14th March 2024 to allow the order of refund of the purchase price and for the court to pronounce itself on the non-monetary consideration of 10 cows and 20 goats as it appears on the agreement.
He prays that the Application be allowed.

The 1st Respondents' Submissions.

12. They are dated 14th October 2024.
They raise one issue for determination; whether the Applicant/Appellant should be granted the review and stay orders of the judgement delivered on 14th March 2024.
Counsel has relied on the Provisions of Order 45 rule 1 of the Civil Procedure Rules and the case of Republic Vs. Advocates Disciplinary Tribunal; Ex parte Apollo Mboya (2019) eKLR.



13. It is also submitted that the Appellant has not stated what new evidence he has come across which he did not have at the time of trial or what error or mistake, on the face of the record that they wish to be rectified.

He has put forward the case of National Bank of Kenya Vs. Ndungu Njau Civil Appeal No. 2111 of 1996.

14. Counsel also submitted that the Appellant is calling on this court to sit on appeal over its own decision hence this Application should fail. It is also submitted that from the arguments put forth he is challenging the judgement of the court.

15. It is further submitted that the Appellant has not annexed a formal extracted decree or order in which the review is sought.

He has put forward the case of Suleiman Murunga Vs. Nilestar Holdings Limited & Another (2015) eKLR.

He prays that the Application be dismissed with costs.

16. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions and the authorities cited. The issue for determination is whether the Appellant's/ Applicant's application meets the threshold for grant of the orders of review under Order 45 rule 1 of the Civil Procedure Rules.

17. The Appellant/Applicant prays that the court do review and or vary its judgement dated 14th March 2024.

18. The grounds relied upon in my view, are issues of facts which were dealt with by the trial court and re-evaluated by this Honourable court before arriving at the Judgement dated 14th March 2024.

19. It is my view that the Appellant is revisiting the issues considered in the Appeal and the subsequent judgement dated 14th March 2024.

20. Order 45 rule 1 of the Civil Procedure Rule provides that;

”(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge 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 other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

21. I have gone through the grounds set out by the Appellant and I find that none conforms with the conditions set out under the above provisions.

22. The Appellant/Applicant appears to be asking this court to sit on its own appeal over its own judgement which is not tenable.



In the case of Murican Transport Limited Vs. Hunker Trading Company Limited HCCC (Milimani) No. S.31 of 2006; Mabeya J made reference to the ruling in National Bank of Kenya Limited Vs. Ndungu Njau where the court stated;

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require any elaborate argument to be established. It will not be 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 provision of law cannot be a ground for review.”

23. I am guided by the above authority in finding that the Application herein does not meet the conditions set out in Order 45 rule 1 of the Civil Procedure Rules. If the Appellant is dissatisfied with the Judgement dated 14th March 2024 he should pursue an appeal.
24. The upshot of the matter is that I find no merit in this application and the same is dismissed with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JANUARY 2025.

L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Naisho for the Appellant/Applicant.

N/A for the 1st Respondent.

N/A for the 2nd & 3rd Respondents.

Court Assistant – Mutisya.

