



REPUBLIC OF KENYA



**Minju v Nairobi County Government & 2 others (Environment & Land
Case 381 of 2018) [2023] KEELC 17156 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17156 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 381 OF 2018
EK WABWOTO, J
APRIL 27, 2023**

BETWEEN

ELVIS MAINA MINJU PLAINTIFF

AND

NAIROBI COUNTY GOVERNMENT 1ST DEFENDANT

MINISTRY OF LANDS 2ND DEFENDANT

HON ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The plaintiff filed an application dated August 18, 2022 which was accompanied by a supporting affidavit sworn by Elvis Maina Minju. In the said application, he sought the following orders:
 - i. That the court be pleased to review and/or set aside its order of April 28, 2022.
 - ii. That costs of this application be in the cause.
2. The application was based on several grounds:
 - a. That, the court misled and misdirected itself by taking the position that the lack of registration of assignments to Rafael Oluoch, Mary Wanjiru and thereafter the applicant herein was indicative of lack of transfer of interest and therefore created an error on the record.
 - b. That, the fact of assignments not being registered was the exact reason why the plaintiff/applicant came to court.



- c. That, the court by failing to apply and/or apprehend provisions of the law at section 7 of the [Limitation of Actions Act](#), the judge occasioned an error on the face of the record.
 - d. That, provisions of the law at c above were relied upon by the plaintiff/applicant the applicant having claimed an interest through Mary Wanjiru who also claimed through Rafael Oluoch and who had taken over the interest from Muchiri and while Muchiri's claim of interest in the land had been extinguished by the passage of 12 years from the time that he (Muchiri) transferred his interest to Rafael Oluoch through an assignment.
 - e. That, by failing to interpret the law in a whollistic manner, the court created an error on the record because a registered holder of an interest in land who has left the said land to be held openly, and without interruption for 12 years is barred from claiming the said land.
 - f. That, by providing that he has been in open occupation of the land and meeting legal requirements of paying rates and rent for the land, the plaintiff/applicant had proved to the court effective occupation as required by law in adverse possession.
 - g. That, the reason for dismissal of the suit by court, that is lack registration, is the exact reason why the plaintiff/applicant came to court in the first place.
 - h. That, objection and/or defence by the 1st and 2nd defendants was feeble and not relevant because the 2nd respondent were simply saying to the court that they had failed in their duty to register the assignment as required by law.
 - i. That, the court ought to address itself on the questions before it and require the 1st and 2nd respondents to execute their mandate by registering the assignment transferring the land to the plaintiff.
 - j. That, the court ought to ensure that a lacuna is not left in respect to registration of ownership of land for cohesive and congruent records of land.
3. The application was opposed by the 1st defendant *vide* a replying affidavit sworn by Sandra Kosgey dated November 7, 2022 in which it was reiterated that the court's position was that transfer of interest in land can only be recognized upon registration.
 4. On March 2, 2023, the matter came up for hearing of the application in which the plaintiff's counsel, Ms Muigai submitted that the object of the originating summons was to seek orders for registration and that there was no challenge to his ownership. Furthermore, the institution that was to undertake the registration had refused. It was submitted that it was an error apparent on the record that the court failed to consider that lack of registration was the object of the application.
 5. The 1st defendant counsel Ms Kosgey opposed the application by submitting that the application had not met threshold for review. It was further submitted that the application was not a review but was calling the court to investigate and hear evidence afresh. She also stated that there was no apparent error since that would only require a glance by the court therefore the plaintiff should have filed an appeal.
 6. Having considered the application, affidavits filed, the parties' submissions and court proceedings, it is clear that the issue for determination before this court is whether the plaintiff has met the threshold to warrant the review of the court's decision rendered on April 28, 2022.



7. Section 80 of the *Civil Procedure Act*, chapter 21 Laws of Kenya provides as follows:

“Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

8. Order 45 rule 1 (1) of the *Civil Procedure Rules* provides as follows:

“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 judgement to the court which passed the decree or made the order without unreasonable delay.”

9. Rule 3(2) of the same order provides that:

“Where the court is of the opinion that the application for review should be granted, it shall grant the same:

Provided that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made without strict proof of such allegation.”

10. In *Salama Mahmoud Saad v Kikas Investment Limited & Anor* [2014] eKLR review of court orders is discussed as follows;

“...Before a review is allowed in the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.”



11. I have also considered the ground of sufficient reason. In *Michael Mungai v Ford Kenya Elections & Nominations Board & others & 2 others* [2013] eKLR, the five judge bench discussed the grounds of “sufficient reason” as follows:

“A decree or order may also be reviewed for any sufficient reason. In our opinion, sufficient reason can only be deduced from the facts and circumstances of a particular case before the court. For example, in the case of *Ngororo v Ndutha & another* [1994] KLR 402 the Court of Appeal held that any person, though not party to a suit, whose direct interest is affected by a judgement is entitled to apply for review. Such a reason can be ‘sufficient reason’ for the purposes of order 45 rule 1(1) for reviewing a decree or an order. An applicant must indeed place convincing evidence before a court for the court to be satisfied that there is sufficient reason to review its decision [emphasis mine]”

12. Paragraph 19 of the judgement outlined three key issues for determination as:

- i. Whether the plaintiff has proved his case to the required standard
- ii. Whether the plaintiff is entitled to the prayers sought
- iii. What orders should issue as to costs...

13. I must reiterate that the plaintiff did not argue on any grounds of ownership by way of adverse possession in the initial application, therefore the court restricted itself to the issues of registration of assignment which were outlined in paragraph 19 aforementioned.

14. Paragraph 21 of the judgement also outlined whether the plaintiff had proven his case. The court stated as follows;

“...Having heard from the plaintiff testimony, it is not disputed that indeed the land was originally owned by Nota Muchiri even though its subsequent transfer to Rafael Oluoch, Mary Muchiri and later the plaintiff is what is disputed by the defendants since the deed of assignment was not registered and neither were there any transfer forms that were executed by him that was presented to court as evidence...”

15. Ultimately, I find that the plaintiff has neither presented new evidence to confirm subsequent transfer to himself nor sufficient reason for review of the orders issued on April 28, 2022. In the foregoing, the court hereby finds that the application dated August 18, 2022 is unmerited for the reasons that the plaintiff has not met the threshold to warrant the review of the court’s judgment and the said application is hereby dismissed with no orders as to costs.

16. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Njoroge h/b for Ms. Muigai for the Plaintiff.

Ms. Kosgey for the 1st Defendant.



N/A for the 2nd Defendant.

N/A for the 3rd Defendant.

Court Assistant; Caroline Nafuna.

