



**Muguku v Ngei & 3 others (Environment & Land Case  
847 of 2017) [2023] KEELC 17101 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17101 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 847 OF 2017  
MN GICHERU, J  
APRIL 25, 2023**

**BETWEEN**

**PATRICK GITONGA MUGUKU ..... PLAINTIFF**

**AND**

**GILBERT MAINA NGEI ..... 1<sup>ST</sup> RESPONDENT**

**ESTATE OF PATRICK NJUGUNA NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**USERNAME INVESTMENTS LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**NGONG CRESENT LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is on the Notice of Motion dated 29/7/2021. The motion which is under Order 45, Rule 1 of the *Civil Procedure Rules* seeks to review the order dated 12/5/2021 which struck out the Plaintiff's suit against the fourth Defendant with the costs to be borne by the first, second and third Defendants. The first, second and third Defendants now seek to review the order on costs so that they be borne by the Plaintiff.
2. The motion is supported by six (6) grounds, an affidavit and one annexure. The gist of the above material is that it is not the first, second and third Defendants who instituted these proceedings. It is the Plaintiff who did and he should pay the fourth Defendant's costs since he is the one who brought this case to court. The three Defendants contend that there is an error apparent on the face of the record to warrant review of the order dated 12<sup>th</sup> May, 2021.
3. The motion is opposed by the fourth Defendant whose counsel, Wanjohi Gichango, has sworn a replying affidavit dated 14/9/2021. In the affidavit the said counsel deposes that the Applicants have failed to point out the error on the face of record or any other ground recognized by the Order 45, Rule 1(1) (b) of the *Civil Procedure Rules*.



Secondly, counsel adds that the learned Judge in her ruling of 12/5/2021 considered all the relevant factors and gave reasons as to why the three Defendants should bear the costs.

Thirdly, counsel for the three Defendants is blamed for releasing the entire balance of the purchase price to his clients leaving the fourth Defendant to demand for the sum of Kshs 1, 644,300 which had been mutually agreed as costs of the fourth Defendant to defend the suit.

Fourthly, the fourth Defendant not having been a party to the consent between the Plaintiff and the three other Defendants should be bound by such a consent.

For the foregoing and other reasons, he prays for the dismissal of the motion dated 29/7/2021.

4. Counsel for parties filed written submissions on 14/3/2022 and 13/6/2022 respectively. The only issue identified by both counsel is whether the court should review the order condemning the three Defendants to pay the costs of the fourth Defendant.
5. I have carefully considered the application dated 29/7/2021 in its entirety including the affidavits, grounds, annexures, the ruling sought to be reviewed, the submissions and the law cited therein.
6. I find that the motion dated 29/7/2021 has no merit for the following reasons.

Firstly, even though the costs should ordinarily have been awarded to the fourth Defendant against the Plaintiff, the court, which has discretion in awarding costs, had two good reasons for making the order that it did.

The first reason is given in the opening part of the second paragraph at page 6 of the ruling dated 12/5/2021 where the learned Judge stated as follows, “I note it is actually the first to third Defendants responsible for the dispute herein having admitted entering into a sale agreement with the Plaintiff and obtained most of the purchase price from him”.

The second reason is to be found in the following two sentences of the same paragraph where the Judge continues as follows. “...Having admitted they sold the suit land to the fourth Defendant, it is my considered view that they should be made to pay for inconvenience caused to the fourth Defendant ...”

The learned Judge having exercised her discretion under Section 27(1) of the *Civil Procedure Act* and further having given reasons for such her decision, I cannot review her decision.

7. Secondly, an error apparent on the face of the record is so obvious that it stares at one in the face. In this case the said error has not been pointed out and I cannot see any staring at me in the face. No error stands out in the ruling sought to be reviewed.
8. Finally, none of the other two grounds envisaged under Order 45(1) (b) *Civil Procedure Rules* as sufficient to warrant review of an order or decree has been shown to exist in this case. They include the discovery of new and important matter or evidence which was not within the knowledge of the party seeking review at the time the decree was passed.

The second is, any other sufficient reason. No other sufficient reason has been advanced by the Applicant to warrant review.

For the above stated reasons, I dismiss the motion dated 29/7/2021 with costs to the Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25<sup>TH</sup> DAY OF APRIL, 2023.**

**M.N. GICHERU**



**JUDGE**

