



REPUBLIC OF KENYA



Muchiri v Wanjiku; Waweru & another (Proposed Interested Parties) (Environment and Land Appeal E065 of 2022) [2023] KEELC 16855 (KLR) (13 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16855 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E065 OF 2022**

JG KEMEI, J

APRIL 13, 2023

BETWEEN

SAMUEL MUNGAI MUCHIRI APPELLANT

AND

BEATRICE NINI WANJIKU RESPONDENT

AND

ANN MUTHONI WAWERU PROPOSED INTERESTED PARTY

KAMAE RESETTLEMENT PROJECT PROPOSED INTERESTED PARTY

RULING

1. The subject of this Ruling is the Applicant's Notice of Motion dated November 28, 2022 and filed on even date. It seeks *interalia* the following Orders;
 - a. Spent
 - b. The Court to issue an order of stay of execution of the Judgment delivered in RUIRU SPMCC NO 336 of 2021 dated the January 28, 2022 and the subsequent decree dated the February 2, 2022 pending the hearing and determination of this Application.
 - c. The Court be pleased to review and /or set aside the Ruling delivered on October 31, 2022 that struck out the Application dated July 19, 2022 and the appeal of even date.
 - d. The Court be pleased to reinstate the Application dated July 19, 2022 and filed on July 27, 2022 and the appeal filed on even date respectively and the same be determined on their merits
 - e. Costs of the Application.



2. The Application is supported on the grounds set out therein together with the Supporting Affidavit of Ndungo James Gachiri Advocate sworn on November 28, 2022. The deponent explained that the 1st time the Applicant heard about the case was on February 4, 2022 when the decree dated February 2, 2022 was pasted on the gate of the premises. That he immediately filed ELCA 10 of 2022 in Nairobi wherein the Applicant was directed by the Hon Court to file the appeal in Environment & Land Court Thika which was seized with jurisdiction on the matter. On March 10, 2022 he filed ELCA 10 of 2022 but withdrew the same and proceeded to file an Application for review on May 18, 2022 in the trial Court which review Application was determined on June 30, 2022.
3. The Applicant having lost the Application in the trial Court proceeded to file the appeal before this Court ELCA No 65 of 2022 on July 26, 2022
4. The Applicant urged the Court to grant its orders as the Applicant has been diligent in approaching the Court.
5. The Application is opposed by the Appellant/Respondent vide his Grounds of Opposition filed on February 20, 2023 as follows;
 - a. The Application is frivolous and vexatious
 - b. Bad in law
 - c. Incurably defective
 - d. An abuse of the process of the Court.
 - e. The appeal is filed without the leave of the Court.
 - f. The Application is defective and ought to be dismissed.
6. The 1st Respondent and the 2nd proposed Interested Party did not oppose the Application nor file written submissions.
7. The Appellant and the Applicant filed written submissions which I have carefully read and considered.
8. The key issues for determination are;
 - a. Whether the Applicant is entitled to orders of review of the orders of this Court dated October 31, 2022 and if yes whether the Application the subject of the said Ruling should be allowed.
 - b. Whether there should be stay of the Judgement in the trial Court
 - c. Costs of the Application.
9. For an Applicant to succeed in an Application for review, he must therefore demonstrate the following; Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the decree was passed or the order made; On account of some mistake or error apparent on the face of the record or for any other sufficient reason and whatever the ground there is a requirement that the Application has to be made without unreasonable delay.
10. This Court is alive to the fact that I determined somewhat a similar Application on October 30, 2022 wherein I struck out the Application and the appeal for the reasons that the Applicant did not avail the pleadings filed in Nairobi that is to say ELCA 10 of 2022 so that the Court may determine whether or not this appeal was filed out of time. I have seen the annexed orders of the Court dated March 9, 2022 which in my respectful view point to the appeal and the Application having been struck out. Even if I



was to accept the argument by the Applicant that the first appeal was filed within time, the same having been struck out, shows time continued running unabated.

11. The second reason why I have difficulty with the Application is that he has not annexed the Application dated the May 18, 2022 in the trial Court which was determined on a preliminary objection. The Court having declined to enjoin the Applicants in the trial Court the available remedy is for the Applicant to appeal the decision. The decision is still in force, it has not been appealed against, set aside and/or vacated.
12. The Court is satisfied that the Applicant has not satisfied the threshold laid above and I find the issue is answered in the negative.
13. The prayer for review having failed, I find that there is no necessity to determine the other issues.
14. The Application is not meritorious. It is struck out with costs to the Appellant/1st Respondent.
15. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF APRIL, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

1st and 2nd Plaintiff/Respondent - Absent

Gachiri for Proposed Interested Party/Applicant

Proposed 2nd Interested Party - Absent

Court Assistants – Kevin/Lilian

