



REPUBLIC OF KENYA



**KENYA LAW**  
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**Monyenche v Nyamboga & 2 others (Environment & Land Case  
35 of 2021) [2023] KEELC 17642 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17642 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 35 OF 2021**

**JM KAMAU, J**

**MAY 31, 2023**

**BETWEEN**

**JOHN NYANG'AU MONYENCHE ..... PLAINTIFF**

**AND**

**NYAMUSI NYAMBOGA ..... 1<sup>ST</sup> DEFENDANT**

**NACKSON ONYANCHA MOMANYI ..... 2<sup>ND</sup> DEFENDANT**

**PERIS KEMUNTO MONYENYE ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. On the 1<sup>st</sup> defendant's Application dated 21/12/2022 the 1<sup>st</sup> defendant seeks for an order of Review of the entire Judgment dated and delivered on 22/04/2022 against the defendants and seeks the setting aside of the same and the replacement of the said judgment with an order dismissing the plaintiff's suit with costs against the 1<sup>st</sup> defendant. The Grounds raised in support of the said Application are that according to the Land Registrar's and County Surveyor's respective Reports dated 02/01/2019 and 26/09/2018 respectively, the applicant's West Mugarango / Bomanono/1137 has never encroached onto the Plaintiff's L.r. No. West Mugarango/Bomanono/1135. This Judgment according to the applicant was an error on the face of the record and that there are sufficient grounds to warrant this court to review its Judgment. On the other hand, the plaintiff/respondent urged that the Application ought not to be granted in view of the inordinate delay of more than 7 months from the time of the delivery of Judgment to the filing of the Application before court and that there was no error on the face of the record and that this offending Judgment ought to have been challenged by way of Appeal.
2. Review is allowed under section 80 of the *Civil Procedure Act* cap 21 which 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.”
3. Order 45 Rule 1 of the *Civil Procedure Rules*, 2010 provides as follows: -
  - “1.
    - (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.”
4. What was the Judgment of the court that is sought to be reviewed? The Judgment delivered on 22/04/2022 read as follows: -
  1. That the defendants be evicted from the parcel of Land No. West Mugirango/Bomanono/1135.
  2. That the defendants do pay Damages of Kshs. 400,000/= jointly and severally.
5. This is what is being impugned. The other prayer is for the review of all the Rulings *“delivered herein against the 1<sup>st</sup> defendant”*. And the same be set aside. To be honest this is a very vague prayer. It is not specific. There are numerous Rulings in the file ranging from Rulings on adjournments to a Ruling on stay of execution made on July 28, 2022 and one on fleeing the defendants from Civil jail filed in December and heard on 08/02/2023 and decided on 06/03/2023, another one for the firm of S.M. Sagwe & Co. to be granted leave to represent the 2<sup>nd</sup> Defendant just to mention a few. I believe this is why it is imperative to attach a copy of the order whose review the applicant seeks. The court cannot go through the file seeking what orders were made against the applicant to determine which one to review and set aside. The applicant must always be specific.
6. As to the boundary reports filed by the Land Registrar and County Surveyor, the Applicant agrees with part of the reports but is not clear on what she does not agree with. The aforesaid reports were adopted by this court on 21/10/21 long before the Judgment was delivered. The 2<sup>nd</sup> defendant unsuccessfully sought the setting aside of the same by an Application dated 09/12/2021. And now,



the 1<sup>st</sup> defendant still wants the same set aside. This is an abuse of precious judicious time which the court cannot entertain. There is therefore no error apparent on the face of the record. The Application dated 21/12/2022 is hereby dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 31ST DAY OF MAY 2022.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Nyangaresi - Court Assistant

Mr. Masolo for the Plaintiff

1<sup>st</sup> Defendant present in court in person

