



Kisorio v Land Registrar, Uasin Gishu County & another; Lagat & 4 others (Proposed Interested Parties) (Judicial Review Application 87 of 2018) [2022] KEHC 3124 (KLR) (20 May 2022) (Ruling)

Neutral citation: [2022] KEHC 3124 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
JUDICIAL REVIEW APPLICATION 87 OF 2018
RN NYAKUNDI, J
MAY 20, 2022**

BETWEEN

JOHN KIBEREN KISORIO APPLICANT

AND

LAND REGISTRAR, UASIN GISHU COUNTY 1ST RESPONDENT

**LAND OFFICER UASIN GISHU COUNTY THROUGH THE ATTORNEY
GENERAL 2ND RESPONDENT**

AND

JONES M. LAGAT PROPOSED INTERESTED PARTY

MIKE K SING'OEI PROPOSED INTERESTED PARTY

TIRONG'O K. ARAP TANUI PROPOSED INTERESTED PARTY

EZEKIEL K. ARAP MENGICH PROPOSED INTERESTED PARTY

RENSON K. MBWAGWA PROPOSED INTERESTED PARTY

RULING

1. What is before the court is a Notice of Motion expressed to be brought under Sections 1A, 1B, 3, 3A and 80(a), (b) of the *Civil Procedure Act*, Order 45 Rule 1,2 and 3 of the *Civil Procedure Rules* and section 8 of the *Law Reform Act*. The applicant herein seeks the following orders;
 - a) Spent
 - b) This Honourable court be pleased to stay execution of the judgment/decreed delivered on the 5th day of November 2019 pending interpartes hearing and determination of this application and eventually of the suit herein.



- c) This Honourable court be pleased to review/set aside/vary its judgment/decreed issued on the 5th day of November 2019, reopen the case and enjoin the proposed interested parties into the suit as interested parties pending the hearing and determination of this application and eventually of the suit herein.
 - d) Costs be provided for.
2. The application is premised on the grounds of opposition and the supporting affidavit sworn by the 2nd proposed interested party.

Applicant's Case

3. It is the applicant's case that the court issued a decree on 5th November 2019 on final orders of Certiorari against the respondents quashing the decision to reject/fail to approve the subject for subdivision of all that parcel of land known as Eldoret Municipality 15/1760. During the existence of the cause the interested parties had put a caution on the subject parcel of land on 20th August 2018 that is still active. The court further issued an order of mandamus compelling the land registrar, Uasin Gishu to approve subdivision of the subject parcel of land and immediately issue a certified extract or green card.
4. Subsequently the ex parte applicant instituted another suit that is active and ongoing being Environment and Land Case No. 10 of 2021. The court issued status quo orders on 10th March 2021 maintaining the subject matter. Failure to enjoin the proposed interested parties whereas the decree issued on 5th November 2019 directly affects the proposed interested parties amounts to a miscarriage of justice. The orders issued on 5th November 2019 may be impossible to enforce in the likely event that the proposed interested parties' defence and counterclaim is allowed against the ex parte applicant's suit in ELC Case No. 10 of 2021.
5. The court is disadvantaged in this cause by failure to bring on board the proposed interested parties defending the subject matter and whom the orders of 10th March 2021 issued on status quo are in favour hence in occupation, utilization and possession thereof.
6. The proposed interested parties are evitable parties in this cause for the court to avoid issuing otherwise conflicting or impractical orders. They are apprehensive that unless the orders are stayed they stand to suffer irreparable loss as they were not given due opportunity to participate in the suit. The application has been brought in good faith and no prejudice will suffer the respondents if orders sought are granted.

Respondent's Case

7. The respondent filed a replying affidavit on 21st February 2022 stating that the application is frivolous. He contends that the court rendered itself functus officio in this matter after delivering the judgment and decree on 30th October 2019 and cannot entertain the application. The applicants were aware of the judicial review matter and the decree issued by the court and decided to sleep on their rights for close to two years.
8. The inordinate delay has not been explained to warrant the court to give them a chance to be heard. This being a judicial review matter the court is only tasked with reviewing the decision of public bodies. The ELC case No. 10 of 2021 is a land dispute being dealt with by the appropriate court and the orders issued therein cannot be the same as orders issued earlier on by this court.
9. The applicants are private persons and therefore if this matter was ongoing they would have no locus standi as parties in the hearing of a judicial review matter. The court had already downed its tools and it would be pointless to enjoin the applicants herein. The application should be dismissed with costs.



10. Upon perusing the pleadings and responses therein I have identified the following issues for determination;

Whether the Court should set aside or vary its judgment and decree issued on 5th November 2019.

Whether the applicant should be enjoined as interested parties.

Whether the Court should set aside or vary its Judgment and Decree issued on 5th November 2019

11. The applicable law for setting aside a judgment or decree of the court is section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Section 80 of the *Civil Procedure Act* 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.

12. Order 45 Rule 1 of the Civil Procedure Rules elaborates on the grounds on which a judgment or decree can be set aside as follows:

(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.

13. In order to set aside the orders issued on 5th November 2019 the court must assess whether the application meets the threshold set out by the law.

a) is there discovery of new and important matter/evidence?

The orders were issued on 5th November 2019. The ELC case was instituted on 29th January 2021, 2 years after the court had already determined the Judicial Review case. This cannot be held to amount to discovery of new evidence. At the institution of the suit in the ELC the JR matter had already been concluded.

b) was the application made without unreasonable delay

The application has been brought two years after the court rendered its decision. The applicant has not explained the delay. I find that the delay is unreasonable.

I note that the application is premised on the probability that the defence and counterclaim in the ELC matter succeed. I find that the applicant is attempting to appeal through the backdoor and the same is an abuse of the court process.



Whether the Applicants should be enjoined as Interested Parties

14. The matter was determined conclusively by this court. In the absence of any reasons as to why the court should set aside the decision there is no reason to make a determination on enjoining the applicants as interested parties.
15. Should the environment and land court make a determination on the matter before them, the court has jurisdiction to make orders with regards to the proprietorship of the land.
16. In the premises I find the application has no merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 20th DAY OF MAY, 2022.

R. NYAKUNDI

JUDGE

