



Murigu v Kenya Commercial Bank Limited (Environmental and Land Originating Summons E007 of 2023) [2025] KEELC 2861 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2861 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023
AA OMOLLO, J
MARCH 20, 2025
IN THE MATTER OF SECTIONS 73(1), 75 AND 78(2)
OF THE LAND REGISTRATION ACT, NO. 3 OF 2012
IN THE MATTER OF SECTIONS REMOVAL OF CAUTION AND REGISTRATION
REGISTERED AGAINST TITLE NO. NAIROBI BLOCK 134/1081

BETWEEN

ERIC NJIRI MURIGI APPLICANT

AND

KENYA COMMERCIAL BANK LIMITED RESPONDENT

RULING

1. For my determination is the motion dated 10th September, 2024 brought by Erick Njiri Murigu/ Applicant under the provisions of sections 1A, 1B, 3 and 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. The Applicant prays for orders;
 1. That the Honourable Court, as the ultimate arbiter of justice, be pleased to review the Judgment and Order of the Court delivered on July, 11th 2024, as follows;
 - a. Prayer 1 of the Originating Summons is allowed, and the Court assesses and grants general damages proposed in the submissions filed by the Applicant.
 - b. Prayer 3 having been allowed, the Court do assess the special damages suffered, proof of which is exhibited.
 - c. Prayer 4 on the costs of the suit should be allowed.
 2. That the Respondent bear the costs of this Application.
2. The applicant is premised on the grounds listed on its face inter alia;



- a. The record shows an error in the Ruling delivered on July 11, 2024, which has led to a failure of justice.
 - b. Whereas the Court acknowledged the wrong visited upon the Applicant, it failed to offer an appropriate remedy.
 - c. Whereas the Court granted the Applicant costs of the suit, it again dismissed prayer 4, which was a prayer for costs of suit.
 - d. Whereas the Court allowed prayer 3 on special damages, it failed to assess special damages despite proof annexed to the Affidavit in support.
 - e. Throughout the Ruling, the Court remained silent on the fate of Prayer 1 of the Originating Summons, which order readily commends itself given the Court's finding in the Ruling and grant of prayer 2.
 - f. Given the findings in paragraph 7 of the Ruling, the Court ought to have allowed prayer 1 of the Originating Summons.
3. Further the Applicant swore the affidavit dated 10th September, 2024 in support of the granting of the orders. He deposes that the ruling carries errors on the face of it, is silent on other matters and has led to a failure of justice. He reproduced the contents of paragraph 7 of the impugned ruling which he states the court went further to disallow in paragraph 8 of the said ruling. He continued that in paragraph 9, the court gives the reasons for not granting the special damages yet the loss was articulated in the affidavit in support of that motion and documents annexed as ENN 7 & 8.
 4. Further that one paragraph dismisses costs and in another, the costs is granted. Lastly, that the ruling is silent on prayer 1 of the motion. He further blames the court for not considering the date of the sale agreement visa-via the date when the restriction was placed on the title. That the loss he suffered for 10 years is not contented.
 5. This application is opposed by the grounds of opposition dated 2nd October, 2024, the Respondent pleaded thus;
 1. The application is frivolous, an abuse of the court process, lacks merit and should be dismissed with costs to the Defendant/Respondent.
 2. That Section 80 and 45 Rule 1 of the Civil Procedure Rules, 2010 provides for instances where a court can review its judgment which reasons/grounds have not been presented by the Applicant herein as no new evidence has been provided, no error or mistake on the face of the record is noted and no sufficient reason has been adduced to warrant the issuance of the said orders sought.
 3. The Applicant is challenging the court's findings and the merits of the decision which is a clear invitation to this court to sit as an Appellant court on its own decision.
 6. Section 80 of Civil Procedure Act and Order 45 of Civil Procedure Rules set out grounds for review thus;
 - i. Discovery of new and important evidence which could not be accessed despite exercise of due diligence.



- ii. Mistake or error apparent on the face of the record.
 - iii. For any sufficient cause
7. In the case of National Bank Vs. Ndungu Njau (1997) eKLR, it was held that;
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
8. Having set the ground rules for review, I now proceed to determine whether there is mistake or error apparent on the face of the record which is the ground adopted by the Applicant. He has proceeded to point out the “errors” in the affidavit sworn in support of the application. First, the Applicant points the error in the ruling is the silence on prayer (1) of the application. He proceeded to urge that the same be granted and the court proceed to assess the general damages proposed in the submissions to the application of 11th October, 2023.
9. I have re-read the impugned ruling and I confirm that on the face of it, there is error in terms that I did not make any finding as regards the prayer for general damages on account of the existence of the restriction on the title NBI Block 134/1081. Therefore, I will proceed to review my ruling on the merits or otherwise of the prayer for general damages. The Applicant relied on the provisions of Section 75 of the Land Registration Act which provides thus;
- “Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has sustained damage, to pay compensation to such person.”
10. The applicant also cited the case of Allan George Njogu Residences Limited Vs National Bank of Kenya Ltd (2013) eKLR, which held that the Court, though prepared to award more, granted the plaintiff’s quest for the lower sum of Kshs.5 million for wrongful caution over his property for 13 years. The court held:
- “It was unfair and insensitive for the defendant to continue holding the plaintiff’s title documents and maintain the caution for all this time. The plaintiff must have suffered loss because of the actions of the defendant. I think the plaintiff is perfectly entitled to some compensation in the form of general damages.”
- “Although I am not sure why Mr. Kimani asked for Kshs.5 million and his basis for this quantification for no authorities on damages were availed to me, I think it is more than a reasonable figure if not on the lower side. I would probably have been inclined to award much more, considering that the plaintiff has been commercially hamstrung for a duration of 13 years. However, if the plaintiff is happy with Kshs.5 million in damages and it feels that it will be adequately compensated with this amount, I can do no better than to award the 5 million claimed. I therefore, award the plaintiff a sum of Kshs.5 million as general damages.”
11. The Applicant urged to be awarded Kshs.10 million considering the decision cited above was reached in 2013. In contradicting the claim for compensation, the Respondent submitted it cannot be concluded



that the caution was wrongly placed or without reasonable cause in view of their claim contained in the case filed in HCC 45 of 2014. Further, the duty to tender evidence is demanded by dint of Section 107 of Cap 80.

12. The Applicant had pleaded that he incurred loss for expenses in the failed transfer of the suit property as a result of the Restriction and caution placed on the title. The losses incurred are particularized in paragraph 3 of the application and stated as special damages in the sum of Kshs.1,866,248.
13. It is my considered view and I so hold that placing a restriction and or caution perse does not amount to a violation of rights that must be compensated without proof of loss suffered. In this case, the loss was pleaded but under the heading of special damages. Blacks law dictionary, 10th edition defines damages as;

“A sum of money adjudged to be paid by one person to another as compensation for loss sustained by the latter in consequence of an injury committed by the former or the violation of some right.”
14. The Applicant became aware of the Restriction/caution in March of 2013 after he entered into a transaction with a 3rd party and he pleaded that the encumbrance caused their deal could not be completed. The Respondent stated that it was entitled to place the restriction but they did not state those reasons in their grounds of opposition filed in response to the impugned application dated 5th February, 2024. Thus, the Applicant has satisfactorily explained the nature of loss suffered for which he is entitled to some compensation.
15. The Applicant urged to be awarded Kshs 10M on the basis of the time when the restriction was placed and the inflation. In this case, the Applicant knew the title was encumbered by 2013 but does not put forth evidence of steps taken either in HCC 45 of 2014 or otherwise between 2013 and 2023 to have the restriction and the caution lifted. Therefore, the assessment will be done purely on the basis on when this court was moved. While assessing the loss, I have considered the fact that it was the records of the title that was restricted but not physical use of the land. The loss for general damages is assessed in the sum of Kshs Three million (Kshs 3,000,000).
16. The second mistake or error taken up is comprised in paragraphs 7 – 9 of the ruling being the lack of clarity as to whether the prayer for special damages was granted. Again, I admit there is a mistake in paragraph 7 of the impugned stating that prayer 3 of the application was also granted. The intention of court is as expressed in paragraphs 8 and 9 which give reasons why the special damages cannot be granted. Under paragraph 8 and 9 of the Impugned ruling. I stated thus;
 - “8. In Regard to the claim for special damages of Kshs.1,758,600 and Kshs.107,645 attributed to the agreement dated 8th September, 2023 the Respondent denied. It attributed the resulting consequences to the Applicant’s willful breach which the Respondent was not party to. It is trite law that special damages must be specifically pleaded and specifically proved. In the case of Hahu Vs Singh (1985) KLR 716, the Court of Appeal held that special damages must not only be specifically claimed (Pleaded) but must also be strictly proved.”
 9. The Applicant chose to prosecute this summons by way of written submissions. It means that the only annexed any evidence that he paid the sums of Kshs.1,758,600 to the person he was selling the land to. Neither has



he annexed receipts for expenses incurred in the alleged repairs, renovations, stamp duty etc.”

17. It is clear from the above paragraphs that I found the sum claimed as special damages was not proved. Therefore, the error under paragraph 7 which held that I allow that prayer is rectified by stating that the same was dismissed. The second limb of the argument by the Applicant that he proved the claim for special damages through annex ENM – 7 & 8 annexed to the supporting affidavit of 11th October, 2023 would be a good ground of appeal. I choose not to re-consider my finding on this point.
18. The 3rd mistake/error pointed out in the impugned ruling is contained in paragraph 12 on the award of costs. The said paragraph read thus;

“As a consequence, I find no proof for the claim for special damages. The said prayer is dismissed. In conclusion, the originating motion succeeds in parts in terms of prayer 2 & 3. Prayer 4 is dismissed. The Applicant is granted costs of the suit.”
19. The application having succeeded in part, the Applicant was entitled to costs. Consequently, it was an error on the face of the record dismissing and awarding costs on the same sentence. In exercise of the powers granted to this court under order 45 of the Civil Procedure Rules, the error is rectified and the correct order made is that the costs of the originating summons dated 11.10.2023 is awarded to the Applicant.
20. Since there was genuine error and or mistake on the face of the ruling dated 11th July, 2024 which necessitated the filing of the present application and for which the Respondent is not responsible for, I order that each party meet their costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH, 2025

A. OMOLLO

JUDGE

