



**Karinga v Kamau (Environment & Land Case 350 of 2017)  
[2023] KEELC 18373 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18373 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 350 OF 2017**

**BM EBOSO, J  
JUNE 19, 2023**

**BETWEEN**

**WILFRED WAWERU KARINGA ..... PLAINTIFF**

**AND**

**LENNY KANINI KAMAU ..... DEFENDANT**

**RULING**

1. For the avoidance of doubt, the plaintiff in this suit is Wilfred Waweru Karinga. The defendant is Lenny Kanini Kamau. This clarification has become necessary because, for reasons that are not clear, when a new file folder was prepared post-judgment in relation to this suit, the designation of the parties on the file folder was interchanged. Lenny Kanini Kamau was erroneously designated as the plaintiff while Wilfred Waweru Karinga was erroneously designated as the defendant. As a result, the error was replicated in the subsequent post-judgment ruling dated 23/8/2022. Parties are advised to maintain the designation and positioning that are contained in the plaint. I say so because, in his application dated 21/4/2022, the defendant, Lenny Kanini Kamau, interchanged the positioning of parties in the suit. That should not have happened.
2. What falls for determination in this ruling is the notice of motion dated 17/10/2022 by Lenny Kanini Kamau [the defendant] through which he seeks a review of the judgment rendered in this suit by Gacheru J on 29/7/2021 and a review of the subsequent post-judgment ruling rendered in this suit by Eboso J on 23/8/2022. A contextual background leading to the ruling of 23/8/2022 was outlined in the said ruling. For a proper appreciation of the factual context in which the court is invited to exercise review jurisdiction, I will replicate the brief background as outlined in the preceding ruling before I dispose the issue that falls for determination in the application dated 17/10/2022.
3. The plaintiff instituted this suit against the defendant in 2017. His case was that in 1995, he sued one Joseph Muigai Macharia in Kiambu SPMC Civil Case No 2736 of 1995, seeking an order of transfer of land parcel number Lari/Maringi/T156 [the suit property] into his name. The final decree



- in the said suit was passed in his favour in December 2006. When he presented the said decree to the Land Registrar, he discovered that Joseph Muigai Macharia had transferred the suit property to the defendant during the pendency of Kiambu SPMC Civil Case No 2736 of 1995.
4. Consequently, he sought a declaration that the transfer of the suit property to the defendant by Joseph Muigai Macharia during the pendency of Kiambu SPMC Civil Case No 2736 of 1995 was null and void. Further, he sought an order cancelling the said transfer. Lastly, he sought an order transferring the land into his name.
  5. The defendant filed a statement of defence dated 4/5/2017 in which he averred that he bought the suit property from Joseph Muigai Macharia at Kshs 65,000 and he was registered as proprietor of the land on 27/12/1995. It was his case that there was no inhibition in the relevant parcel register at the time of purchase.
  6. Hearing of the case commenced on 3/7/2019 before Gacheru J. The plaintiff testified and was cross-examined by the defendant's counsel, Mr Macharia. Upon re-examination, the plaintiff closed his case. On that day, the defendant's counsel informed the court that the plaintiff was on his way to court but had not arrived in court and could not be reached on phone. The court granted the defendant a last adjournment. Hearing of defence case was adjourned to 15/10/2019. On 15/10/2019, the defendant did not attend court to give evidence and his advocate, once more, pleaded with the court to give the defendant yet another last adjournment. Upon considering the application, the court found that the defendant had been accommodated sufficiently and directed parties to file their written submissions.
  7. In the intervening period, the defendant's advocates filed an application dated 2/11/2019, seeking leave to cease acting for the defendant. The defendant's advocate, Mr Macharia K Karanja, swore an affidavit of service deposing that he duly served the application on the defendant on 3/12/2019. Consequently, on 18/2/2020, the Deputy Registrar granted the law firm the plea for leave to cease acting for the defendant.
  8. When the matter was subsequently listed before Gacheru J on 28/4/2020, she once again gave the defendant a last chance to tender defence evidence on 22/6/2020. There was no attendance on 22/6/2020 and 30/9/2020. On 23/11/2020 Gacheru J listed the matter for mention on 14/4/2021 for the purpose of taking judgment date. Judgement was eventually delivered by Gacheru J on 29/7/2021.
  9. On or about 25/4/2022, the defendant brought a notice of motion dated 21/4/2022, seeking an order setting aside the Judgment rendered on 29/7/2021. Further, he sought an order consolidating this suit with Kiambu SPMC Civil Case No 2736 of 1995. He further sought an order granting him leave to amend his defence and bring a counterclaim. The said application is the subject of this ruling.
  10. This court [Eboso J] considered the application dated 21/4/2022 and disposed it through a ruling rendered on 23/8/2022. The court rejected the application on the ground that it lacked merit.

## **Application**

11. About two months after the court declined to set aside the judgment in this suit, the defendant, Lenny Kanini Kamau, brought a notice of motion dated 17/10/2022, seeking a review of both the judgment rendered on 29/7/2021 and the ruling rendered on 23/8/2022. As indicated in one of the opening paragraphs of this ruling, that application is what falls for determination in this ruling.
12. The application dated 17/10/2022 is supported with the defendant's affidavit sworn on 17/10/2022. It was canvassed through written submissions dated 8/11/2022, filed by M/s Wanjiru Nguru & Associates. The case of the defendant/ applicant is that he "chanced" upon information that the plaintiff/respondent herein obtained a decree dated December 2006 emanating from the Judgment in



Kiambu SPMC Civil Case No 2736 of 1995 contrary to the provisions of the law. He adds that Joseph Muigai Macharia who was the plaintiff in Kiambu SPMCC Civil Case No 2736 of 1995 was deceased prior to “the application and granting” of the decree in Kiambu SPMC Civil Case No 2736 of 1995 and no effort for substitution had been made.

## Response

13. The plaintiff, Wilfred Waweru Karinga, opposes the application through a replying affidavit sworn on 24/10/2022 and written submissions dated 24/10/2022. His case is that the judgment in Kiambu SPMC Civil Case No 2736 of 1995 was rendered in 1999 when Joseph Muigai Macharia was still alive and he elected not to challenge the Judgment. He adds that when Joseph Muigai Macharia died, his estate elected not to seek substitution. He further contends that to enforce the decree, he applied to the court which had rendered the judgment to grant an order authorizing the court officers to execute the vesting documents. The plaintiff adds that the defendant filed an application in Kiambu SPMC Civil Case No 2736 of 1995 seeking to set aside the Judgment of the Senior Principal Magistrate Court and the application failed. He urges the court to reject the application.

## Analysis and Determination

14. I have considered the application; the response to the application; and the parties’ respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The single question to be determined in the application is whether the defendant has satisfied the criteria upon which our trial courts exercise the jurisdiction to review their judgments or rulings.
15. Jurisdiction to review a judgment or a ruling is donated by section 80 of the [Civil Procedure Act](#) 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;
    - 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.”
16. The principle upon which the above jurisdiction is exercised by our trial civil courts is spelt out in Order 45 Rule 1 of the [Civil Procedure Rules](#) which provides 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.



(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

17. The reasons advanced by the defendant as a ground for reviewing the judgment and the ruling dated 23/8/2022 is that he has “chanced” upon information that the plaintiff obtained a decree in Kiambu SPMC Civil Case No 2730 of 1995 “contrary to the provisions of the law”. He contends that the plaintiff obtained the said decree against the defendant in the said suit post-humously without an order of substitution.
18. The defendant did not exhibit the judgment that was rendered in Kiambu SPMC Civil Case No 2736 of 1995. Neither did he exhibit the formal decree that was extracted out of the said judgment. On his part, the plaintiff averred that the judgment in Kiambu SPMCC No 2736 of 1995 was rendered in 1999. The said judgment was produced during trial before Gacheru J. It is clear from the judgment that it was delivered by Hon G M Njuguna on 4/5/1999.
19. The death certificate which the plaintiff exhibited reveals that Joseph Muigai Macharia died on 25/1/2005. This was more than five years after the judgment and the decree in Kiambu SPMC Civil Case No 2736 of 1995 had been rendered. It cannot therefore be true that the plaintiff procured the decree in the said suit post-humously.
20. This suit was instituted in 2017. In his statement of defence dated 4/5/2017, the defendant made reference to Kiambu SPMC Civil Case No 2736 of 1995 in paragraph 3 of the defence, meaning that he was aware of the said case at the time trial in the present suit took place. He was aware of the decree and all the proceedings in the said suit.
21. It does emerge from the evidence that was placed before this court by both parties that the allegation which the defendant is putting forth as a basis for reviewing the judgment and ruling of this court relate to a post-judgment/post-decree affidavit which a process server swore relating to service during enforcement of the decree in Kiambu SPMC Civil Case No 2736 of 1995. It has no bearing on the evidence that this court considered when rendering the impugned judgment and the impugned ruling.
22. The result is that the defendant has failed to satisfy the criteria upon which our trial courts exercise jurisdiction to review their judgments and/or rulings. Consequently the defendant’s application dated 17/10/2022 fails and is dismissed for lack of merit. The defendant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF JUNE 2023**

**B M EBOSO**

**JUDGE**

In the Presence of: -

Mr Ndungu for the Plaintiff

Mr Macharia for the defendant

