



**Egondi v Pamba & another (Environment & Land Case
E008 of 2020) [2025] KEELC 165 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 165 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E008 OF 2020**

**BN OLAO, J
JANUARY 29, 2025**

BETWEEN

THADDEUS EGONDI APPLICANT

AND

PAULO NERIMA PAMBA 1ST RESPONDENT

DANIEL CONGO WANGIRA 2ND RESPONDENT

RULING

1. The dispute between Thaddeus Egondi (the Applicant) And Paulo Nerima Pamba And Daniel Congo Wangira (the Respondents) with regard to the land parcel NO Bunyala/Bulema/139 and which was subsequently sub-divided to create the land parcels NO Bunyala/Bulema/3742, 3743, 3744, 3745 and 3746 (later sub-divided into land parcels NO Bunyala/Bulema/4670 and 4671), was determined vide a consent dated 13th September 2021. The same was signed by Mr J. P. Makokha counsel for the Applicant and by the Respondents acting in person. That consent was on 7th December 2021 adopted as a judgment of this court and the same was formally extracted on 16th December 2021 and signed by the Deputy Registrar of this court.
2. The terms of the consent were as follows:
 1. “The registration of land parcel NO Bunyala/Bulema/3742, 3743, 3744, 3745 (as subsequently sub-divided into 4680 and 4671), 3746 and all entries thereto in the register be and is hereby revoked and cancelled altogether and the same to revert back to the NO Bunyala/Bulema/139”.
 2. “The Respondents to surrender to the Land Registrar all titles deeds issued to them in respect of land parcels NO Bunyala/Bulema/3746 and NO Bunyala/Bulema/4671”.



3. “The County Surveyor be and is hereby ordered to visit land parcel NO Bunyala/Bulema/139 and with the agreement of the common tenants partition the same into four portions and draw new mutations and have them registered.”
 4. “Costs of the surveying exercise and the registration of the mutations and the new numbers thereof to be shared equally between the Applicant and the Respondents herein.”
 5. “Upon completion of the surveying exercise and the registration process of the new numbers, this matter be fixed for mention before the Honourable Court for confirmation of compliance and final closure orders and directions.”
 6. “Each party to bear its own costs.”
3. The Respondents thereafter declined to sign the mutation forms to facilitate the sub-divisions of the land parcel NO Bunyala/Bulema/139 into four (4) portions as per paragraphs 3 of the consent. This prompted the Applicant to move to this court vide his Notice of Motion dated 29th March 2023 in which he sought the order that the Deputy Registrar of this court be authorized to do so on their behalf. That application was allowed by this court vide the ruling delivered on 3rd May 2023.
 4. The Applicant then moved to this court vide his Notice of Motion dated 19th December 2023 and which is the subject of this ruling. The Motion is anchored under the provisions of Orders 45 and 57 of the Civil Procedure Rules and Sections 1A, 1B, 3 and 3A of the Civil Process Act and the Applicant seeks the following orders:
 1. “That order Number 3 of the Honourable Court’s order dated the 16th December 2021 be reviewed and/or varied to capture the consent subsequently made by the parties to the effect that the parcel of land Bunyala/Bulema/8265 which is the equivalent of former parcel NO Bunyala/Bulema/139 be partitioned.”
 2. “That costs of this application be provided for.”
 5. The Application is supported by the Applicant’s affidavit of even date in which it is deposed, inter alia, that the consent order herein cancelled or revoked the registration of the lands parcels NO Bunyala/Bulema/3742, 3743, 3744, 3745 and subsequently sub-divided to create parcels NO 4670, 4671 and 3746 to revert back to the land parcels NO Bunyala/Bulema/139. That in effecting the said order, the Land Registrar combined the land parcels NO Bunyala/Bulema/3742, 3743, 3744, 3746, 4670 and 4671 to create the land parcels NO Bunyala/Bulema/8265 stating that the same was equivalent to land parcel NO Bunyala/Bulema/139. And that while visiting the ground to prepare the mutation for sub-division of the land parcel NO Bunyala/Bulema/8265 into four (4) portions as ordered by the court, the parties to this suit who were present advised and insisted that the Land Registrar sub-divide the land instead into two portions, a request which the Land Registrar agreed with and implemented. That the agreement reached by the parties was new information which was not available or had not been agreed upon at the time the consent resulting to the order dated 16th October 2021 was reached. That the agreement to sub-divide the land into two (2) portions instead of four (4) was a deviation from the terms of the court order dated 16th December 2021.
 6. The following documents are annexed to the supporting affidavit:
 1. Copy of the consent judgment dated 16th December 2021.
 2. Copy of a letter dated 23rd March 2023 from the Land Registrar Busia and addressed to the Deputy Registrar of this court.



3. Certificate of Search for the land parcel NO Bunyala/Bulema/8265.
4. Register for the land parcel NO Bunyala/Bulema/8265.
5. Mutation Form for the land parcels NO Bunyala/Bulema/3742, 3743, 3744, 3745 (4670, 4671) and 3746.
6. Mutation Form for the land parcel NO Bunyala/Bulema/8265.
7. When the application came up for directions on 4th March 2024, I informed Mr J. P. Makokha counsel for the Applicant that in my view, the only option was for the parties to file another consent. Mr. J. P. Makokha sought time to find out if that could be done. Meanwhile, there was confusion on whether Mr Athunga was representing the 1st Respondent having entered appearance for the Respondents. Mr Athunga later confirmed on 14th October 2024 that he was not representing the 1st Respondent and his name was expunged from the record. Later, the 1st Respondent stated that his counsel was one Mr Patrick Ochieng who was however not on record. This confusion persisted until the 1st Respondent informed the court on 14th October 2024 that he would act in person. The 2nd Respondent did not attend court until 13th November 2024. On that day however, Mr J. P. Makokha did not attend the court and the Applicant told the court that he wished to prosecute his case in person.
8. Meanwhile, the 1st Respondent filed his replying affidavit dated 25th September 2024. The said replying affidavit is really not a response to the Notice of Motion dated 19th December 2024. In paragraph 1 thereof, the 1st Respondent depones as to how the parties have collectively agreed to revoke the newly generated title to land parcels NO Bunyala/Bulema/3742, 3743, 3744, 3745, 4670 and 4671 and retain the original title NO Bunyala/Bulema/139. That this decision was based on numerous errors in the drawing during the land demarcation. He then goes on to depone how the elders had established the boundary by planting sisal on lines delineating the division between the families residing on the land. That in 2004, the Land Tribunal recognized those boundaries but the current mutations registered at the Land Registrar's Office do not align with what the elders decided and which necessitated judicial intervention. After some years, he sold a portion of his land to the 2nd Respondent. He therefore appeals to this court to expeditiously conclude this matter.
9. Annexed to his replying affidavit are the following documents:
 1. Copy of map depicting land parcel NO Bunyala/Bulema/139.
 2. Copy of a letter dated 13th June 2006 addressed to the Principal Magistrate Busia by the District Officer Budalangi ref: Bunyala/Bulema/139.
 3. Application for consent to sub-divide land parcel NO Bunyala/Bulema/139.
 4. Copy of order in Busia Principal Magistrate's Court Land case NO 24 of 2004 issued on 29th March 2006.
 5. Copy of proceedings in Busia Principal Magistrates Court land case NO 24 of 2004.
 6. Copy of letter dated 29th January 2006 by the 1st Respondent and addressed to the Principal Magistrate's Court Busia.
 7. Copy of proceedings in Budalangi Land Disputes Tribunal held on 16th July 2004 and 21st July 2004 in respect of land parcel NO Bunyala/Bulema/139.
 8. Certificate of Official Search for the land parcel NO Bunyala/Bulema/139.



The 2nd Respondent did not file any response to the application.

10. The application was canvassed orally in open Court on 13th November 2024.
11. The Applicant opted to prosecute his application in the absence of his counsel and asked the court to rely on his supporting affidavit. The 1st Respondent also asked the court to rely on his replying affidavit while the 2nd Respondent confirmed that he had not filed any reply to the application. No submissions were filed.
12. I have considered the application, the rival affidavits by the Applicant and the 1st Respondent and the annexures.
13. The Motion is anchored on the provisions of Orders 45 and 47 of the Civil Procedure Rules. The Applicant seeks the substantive prayer that Order 3 of the Court's Order dated 16th December 2021 be reviewed and/or varied to capture a subsequent consent by the parties that the land parcel NO Bunyala/Bulema/8265 which is equivalent to the former land parcel NO Bunyala/Bulema/139 be partitioned.
14. The power to review an order or judgment is provided for in Section 80 of the Civil Procedure Rules which states:

“ 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.”

The procedure to invoke the exercise of such power by the Court is set out in Order 45 Rule 1 (1) of the Civil Procedure Rules 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.”
Emphasis mine.

Therefore, a person seeking any order for the review of a judgment or order must satisfy the following conditions:

- 1: Show that there has been a discovery of new and important matter or evidence which was not within



his knowledge and could not be produced when the decree was passed or the order made;

- 2: Demonstrate that there is some mistake or error apparent on the face of the record;
- 3: Provide any other sufficient reason.
- 4: Make the application without unreasonable delay.

The above was reiterated by the Court of Appeal in the case of Francis Origo & Another -v- Jacob Kumali Mungala C.a. Civil Appeal No 149 Of 2001 [2005 eKLR] where it said that to warrant such a remedy;

“... an applicant has to show that there has been discovery of new and important matter or evidence which after due diligence, was not within his knowledge or could not be produced at that time or he must show that there is some mistake or error apparent on the face of the record or that there was any other sufficient reason. And most importantly, the applicant must make the application for review without unreasonable delay.”

Emphasis added.

It is clear from the above that any delay, unless satisfactorily explained, will defeat an application for review.

15. The order sought to be reviewed arose out of the parties consent dated 13th September 2021 and filed herein on 23rd September 2021. Same was adopted by Omollo J on 7th December 2021. This application was filed on 19th December 2023 some 2 years later. No explanation, satisfactory or otherwise, has been offered by the Applicant for this delay which is clearly “unreasonable”. On that basis alone, this application is for dismissal.

16. That notwithstanding, it is clear from the Applicant’s supporting affidavit that following that consent, the parties went to the Land Registrar and, as per paragraph 5 thereof “insisted to the Land Registrar to subdivide the land instead into two portions, a request the Land Registrar agreed with and implemented.” The consent order adopted by the court on 7th December 2021 was specific in paragraph 3 thereof that:

- 3: “The County Surveyor be and is hereby ordered to visit land parcel NO Bunyala/Bulema/139 and with the agreement of Common tenants partition the same into four portions and draw new mutations and have them registered.” Emphasis added.

So basically, the parties went to the Land Registrar and made another agreement long after the consent. Yet in paragraph 6 of his supporting affidavit, the Applicant has deposed thus:



- 6: “That the agreement reached by the parties was new information that was not available or had not been agreed upon at the time the consent resulting to Order dated 16th October 2021 was reached.”

The Applicant’s application appears, from the above paragraph, to be anchored on the ground of new and important matter or evidence which was not available at the time the consent was recorded. However, I do not think that ground can be invoked in a situation such as this where the parties on their own volition went to the Land Registrar and purported to craft another agreement. More significantly, the said agreement now makes reference to another parcel of land which is Bunyala/Bulema/8265 and which is claimed to be “the equivalent of former land parcel Bunyala/Bulema/139”. I do not see how two land parcels bearing different parcels numbers can be considered to be equivalent to each other.

17. Ultimately therefore, I am not persuaded that the Notice of Motion dated 19th December 2023 is merited. The same is dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 29TH DAY OF JANUARY 2025.

BOAZ N. OLAO

JUDGE

29TH JANUARY 2025

