



Charo v Land Registrar Kilifi & another (Environment and Land Miscellaneous Application 23 of 2019) [2023] KEELC 20961 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20961 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 23 OF 2019
NA MATHEKA, J
OCTOBER 25, 2023**

BETWEEN

DUNCAN CHARO APPLICANT

AND

THE LAND REGISTRAR KILIFI 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

RULING

1. The application is dated 18th May 2023 and is brought under Article 159 (2) (d), Section IA 1B, 3A of the [Civil Procedure Act](#), Order 12, Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#) seeking the following orders;
 1. That this Application be certified as urgent and be heard ex-parte in the first instance.
 2. That there be a stay of execution of the ruling delivered on 27th July, 2022 and the order issued on 12th October, 2022 and any consequences therefrom and any further proceedings in this suit pending the hearing and determination of this application.
 3. That this court be pleased to set aside the ruling delivered on 27th July, 2022 together with all consequential orders arising there from.
 4. That the costs of this Application be in the cause.
2. It is based on the following grounds that this Honourable Court delivered it's ruling on 27th July 2022. That the said order was served upon the Kilifi Land Registry on 3/11/2022. That at the same time the Kilifi Land Registry was notified of a judgment delivered on 7th September, 2022 by Lady Justice Odeny touching on the same suit property in Malindi ELC Case No 5 of 2014. That consequently the conflicting orders have made enforcement impossible. That there are warrants of arrests against the 1st Respondent for failure to execute the court's orders. That it is in the interest of justice that



the proceedings of the order issued on 27th July 2022 and dated 12th October, 2022 together with all consequential orders arising there from be set aside. That the grant of the orders sought will not occasion any prejudice to the Applicant/Respondents. That it will be just to grant the orders sought herein in the interest of justice.

3. The Applicant stated that the 1st and 2nd Respondents herein were ordered inter alia to comply with the court order issued on 18th May 2018 within 60 (sixty) days after service of this order, failure of which they will be cited for contempt and be directed to pay a fine of Kshs. 50,000/- each and in default, the Respondents to each be committed to civil jail for a period of one (1) month. That the court Order that was issued on 12th October 2022 personally upon Stella G. Kinyua. Stella G. Kinyua acknowledged receipt of service of the court order by stamping on the principal copy. Annexed h and marked "DC-I(a) & are copies of the duly served court order and affidavit of service. That the court was aware of Malindi ELC No 5 of 2014 which the 1st Respondent herein was the 1st Defendant in the said matter and the issue of the said suit was raised before the application dated 20th June 2019 was heard and the ruling delivered on 27th July 2022. That during the pendency of the application dated 20th June 2019 for contempt of court herein, there was no order of stay of proceedings in this matter in light of the proceedings in Malindi ELC No 5 of 2014, thus there was no order halting the proceedings in this matter and no attempt was made to apply for the same. That the ruling in this court was delivered on 27th July 2022 way before the judgment of the court in Malindi ELC No 5 of 2014 and Ms. Stella G. Kinyua deliberately disobeyed the court order until the judgment in Malindi ELC No 5 of 2014 was delivered. That having defied a valid court order, Ms. Stella G. Kinyua cannot hide behind the fact that the court in Malindi ELC No 5 of 2014 entered a judgment which is different from the judgment of this court dated 18th May 2018 yet, she was in blatant disobedience of the court order for over five (5) years. That it is not enough for Ms. Stella G. Kinyua to wave a transfer letter in the face of this court with the intent of escaping liability for disobeying the court order while she was still the Land Registrar, Kilifi County. Furthermore, Ms. Stella has not demonstrated any steps taken towards complying with the court order before she was transferred to Nairobi.

4. This court has considered the application and submissions therein. The said application in my opinion is anchored under Order 45 Rule 1(b) of the [Civil Procedure Rules](#) which provides:-

Any person considering himself aggrieved—

(a)

(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”.

5. It is apparent from the above provisions of law that for an Applicant to succeed in an application for review, he needs to establish;

a) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.



- b) Existence of some mistake or error apparent on the face of record.
 - c) Any other sufficient reason.
 - d) Application be made without unreasonable delay.
6. I have perused the court record and indeed find that there is a judgment delivered on 7th September, 2022 by Lady Justice Odeny touching on the same suit property in Malindi ELC Case No 5 of 2014 touching on the subject matter which has conflicting orders and hence execution of orders from this court are not possible. It is curious that the applicant in the instant case did not notify the court in Malindi of this case and yet he was the 1st Defendant therein. Parties ought to raise the issue of res judicata and/ or sub judice at the earliest opportunity to avoid the courts giving conflicting orders. I find the orders of this court have been overtaken by events and cannot be executed. I find that application dated 18th May 2023 is merited and I grant the same. This file is transferred to ELC Malindi for hearing and determination as there is a substantive suit touching on the same subject matter and similar parties. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF OCTOBER 2023.

N.A. MATHEKA

JUDGE

