



Ouma v Mwaga (Sued as the Legal Representative of the Estate of Peter Mwaga Ombura - Deceased) (Environment and Land Appeal 6 of 2022) [2023] KEELC 20917 (KLR) (18 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20917 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL 6 OF 2022
GMA ONGONDO, J
OCTOBER 18, 2023
FORMERLY MIGORI ELC APPEAL NO. 3 OF 2019**

BETWEEN

MORRIS ODHIAMBO OUMA APPELLANT

AND

MARY JUMA MWAGA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER MWAGA OMBURA - DECEASED) RESPONDENT

RULING

1. By a notice of motion application dated 15th August 2023 commenced under articles 48 and 50 of the *Constitution of Kenya*, 2010 and section 80 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, among other provisions of the law, the applicant/respondent, Mary Juma Mwaga through the firm of Quinter Adoyo and Company Advocates, is seeking the following orders;
 - a. That the Honourable Court be pleased to review its judgment rendered on the 25th day of January 2023 by rectifying the error apparent on the face of paragraph 33 and the ensuring decree issued on July 5, 2023.
 - b. Costs.
2. The application is premised upon grounds 1 to 4 set out on it's face and the applicant's supporting affidavit of nine paragraphs sworn on even date. The gravamen of the application is at paragraph 3 of the said affidavit which reads;

“The judgment was delivered on 25/1/2023 in which the appeal by the appellant was dismissed and costs were erroneously awarded to the appellant, as captured in paragraph 33 of the said judgment”. (See a copy of judgement marked as MA-001)



3. The respondent's counsel, Messes Oguttu Mboya and Company Advocates was duly served with the application via email as per an affidavit of service sworn on August 8, 2023 by Quinter Adoyo, the applicant's counsel. So, the respondent was made aware of this application but opted not to respond to the same; see *Ogada v Mollin* (2009) KLR 620.
4. Ms. Akinyi instructed by Quinter Adoyo and Company Advocates has informed the court that the applicant do not intend to file submissions concerning the application. That let the court determine it.
5. I have duly considered the application in entirety and there is no response to the same. In that regard, is the application meritorious?
6. The Constitutional and the statutory provisions under which the application was initiated, are all borne in mind. Also, I am guided by Article 159 (2) (b) of the *Constitution of Kenya*, 2010 and section 3 of the *Environment and Land Court Act*, 2015 (2011) that justice shall be rendered without delay.
7. Moreover, this court has the mandate under section 99 of the *Civil Procedure Act* Chapter 21 Laws of Kenya, to correct any apparent errors in it's judgement, ruling and orders; see *Charles Karathe Kiarie & 2 others v Administrator of the Estate of John Waliace Mathare (Deceased) & 2 others* (2020) eKLR.
8. In the premises, there is an error apparent on the face of paragraph 33 of the judgment. The same calls for correction to attain the ends of justice. So, I find the application firm and meritorious.
9. Accordingly, I would allow the application in terms of the 1st and 2nd prayers therein and as stated in paragraph 1 (a) and (b) hereinabove.
10. It is so ordered.

DELIVERED AND DATED AT HOMA BAY THIS 18TH DAY OF OCTOBER 2023

G. M .A ONGONDO

JUDGE

PRESENT

Ms. Akinyi instructed by Quinter Adoyo learned counsel for the applicant/ respondent

Court Assistant: Luanga.

