



REPUBLIC OF KENYA



Somoni v Muangi & 3 others (Environment and Land Case Civil Suit E343 of 2022) [2023] KEELC 22350 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E343 OF 2022
LN MBUGUA, J
DECEMBER 14, 2023**

BETWEEN

JOYCE BOSIBORI SOMONI PLAINTIFF

AND

SAMMY MUSILI MUANGI 1ST DEFENDANT

SINAI VISION INVESTMENT AGENCIES LIMITED 2ND DEFENDANT

WINFRED KANINI MBONDO 3RD DEFENDANT

THE CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. The 1st Defendant's Notice of Motion dated 14.8.2023 is for determination. He seeks orders that this court reviews its ruling and orders issued on 27.7.2023, sets the said orders aside and hears the application dated 22.3.2023 de novo. The applicant avers that he is aggrieved by this court's ruling of 27.7.2023 which was premised on an erroneous finding that the Plaintiff's application dated 22.5.2023 is unopposed.
2. That to the contrary, he was opposed to the application by way of a comprehensive affidavit dated 17.7.2023 which detailed how and when the suit properties subject to this suit were purchased by himself without any contribution by the Plaintiff, as well as the current tenancy status of the properties. He avers that he requires part of the rent to pay his medical bills and school fees.
3. The application is opposed by the Plaintiff vide her replying affidavit sworn on 11.10.2023. She argues that there is no error apparent on the record as the application dated 22.5.2023 was unopposed at the time it was heard on 11.7.2023. That it is only after the application was heard that the 1st Defendant purported to file a replying affidavit without leave of the court, way after the date of ruling was reserved.



4. That no party is prejudiced by the order of 27.7.2023 to deposit rental income in a joint interest earning account in the name of the parties advocates, as this will ensure accountability as any access to the said funds will be by consent of the parties under the supervision of the court. She also contends that she is solely paying fees and catering for the needs of her children.
5. I have duly considered the rival arguments as well as the submissions of the applicant. I have also keenly perused the records. This court is enabled to review its judgement/orders by Section 80 of the Civil Procedure Act, while Order 45 Rule 1 (b) of the Civil Procedure Rules sets the rules /grounds for review.
6. The 1st Defendant's main ground for review is that there was an error on the record since its replying affidavit sworn on 17.7.2023 was not considered.
7. The 1st Defendant's claim that it was granted leave to file a replying affidavit on 11.7.2023 is not correct. The true position is that the application dated 22.5.2023 was scheduled for hearing on 11.7.2023. When the matter was mentioned in the virtual platform, counsel for the applicant averred that they had not been served and in rejoinder, counsel for the plaintiff indicated that they served on 24.5.2023. This exchange prompted the court to give directions for the matter to be mentioned in open court.
8. Later on when the court proceeded in open court, the plaintiff affirmed that they had effected service. No leave was sought to extend time to file any documents, hence the court proceeded to give a ruling date.
9. A perusal of the file in the digital platform (CTS) reveals that indeed the 1st defendant was served vide two emails. The 1st defendant's advocates have not denounced the mentioned email addresses. It follows that any filing of documents without the leave of the court cannot be termed as an error on the face of the records to warrant a review, See National Bank of Kenya Limited v Ndungu Njau (1997) eKLR.
10. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR, the court stated as follows;

“The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible”
11. I find that the application dated 14.8.2023 is not merited, the same is dismissed with costs to the plaintiff. Parties should focus on the substantive issues geared towards a speedy resolution of the dispute.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Omondi holding brief Mr. Kenyatta for the Plaintiff

Muthama for 1st – 3rd Defendants

A.Kamau for 4th Defendant



Court Assistant: Eddel

