



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISC CIVIL APPLICATION NO 52 OF 2016

MACHARIA WAIGURU.....APPLICANT

VERSUS

1. MURANG'A COUNTY GOVERNMENT

2. MURANG'A MOTOR SPARES LTD....RESPONDENTS

RULING

1. The Applicant, Macharia Waiguru, has applied under Article 165(6) and (7) of the *Constitution of Kenya, 2010* for the following main order –

(a) That this court do expunge from the record of **Murang'a CMCC No 415 of 2009** “the proceedings and judgment therein” and order a fresh hearing of the suit.

(b)

(c)

2. The application is premised upon the following grounds –

i. That the learned magistrate who heard the suit was subsequently removed from the bench by the Vetting Board “on the twin complaints of the poor quality of his judgments and integrity which were both my complaints to the Vetting Board.”

ii. That the record of the proceedings was “doctored to favour” the Respondents.

iii. That “at first the idea was to dismiss the suit because the Applicant’s evidence was inconsistent but changed tack when this was impossible as the matter in question involved a simple question, i.e., failing to comply with section 201A of the Local Government Act”.

iv. That in **Nyeri HC Civil Appeal No 12 of 2014** the Attorney–General did “not deny that money changed hands and so the Respondents have no defence for it takes a giver and a taker in the realm of bribery and corruption”.

v. That the judgment is so defective on the face of it “that it forced the Court of Appeal to authorize (the) Applicant verbally to take his car from the council which counsel for the 1st Respondent prevented by imposing conditions not to sue the council before its release”.

3. The application is supported by the affidavit of the Applicant annexed thereto in which he gives a factual background to the application.
4. The 1st Respondent filed grounds of opposition dated 18/11/2016. Those grounds are –
- i. That the application is a sham, an abuse of the court process, and that it does not lie.
 - ii. That the court does not have such a wide discretion as proposed by the Applicant.
 - iii. That the Applicant’s original suit was heard to conclusion and a first and second appeal from the original judgment dealt with by appellate courts.
 - iv. That issues regarding the trial magistrate’s competence were dealt with by other bodies.
5. The 1st Respondent also filed a replying affidavit. It is sworn by its learned counsel, and annexed thereto is the judgment of the *Court of Appeal* sitting at *Nyeri in Civil Appeal No 25 of 2013*.
6. I heard the application on 13/11/2017. I have considered the submissions of the Applicant (who is a learned advocate of this court) and those of the learned counsel for the 1st Respondent. The 2nd Respondent was never served with the application because, the Applicant stated, it never participated in the original proceedings.
7. The Applicant submitted that the magistrate who heard his case in the trial court was subsequently removed from the bench by the Vetting Board partly upon the Applicant’s complaints; that the Applicant appealed against the judgment of the trial court to the *High Court* where he “pointed out the failings of the trial magistrate; that his said appeal was dismissed; that he appealed to the *Court of Appeal* against the judgment of the *High Court*; that he again pointed out the failures of the trial magistrate and also those of the *High Court*; and that his said second appeal was also heard and dismissed. Learned Applicant had no precedent for his novel application. He ended his submissions by stating that he is an advocate of this court, and has been so for many years.
8. For the 1st Respondent it was submitted that the Applicant’s original suit was heard and dismissed, and further, that his two appeals to the *High Court* and the *Court of Appeal* were also heard and dismissed. In these circumstances, it was further submitted, entertaining his present application would be tantamount to sitting on appeal over both the *High Court* and the *Court of Appeal*. Having exhausted all the lawful avenues open to him, the Applicant should let the matter rest.
9. **Article 165(6) and (7)** of the Constitution provides –
- “165. (6)The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.**
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”**
10. It is no doubt from **Article 165(6) and (7)** that the *High Court* derives, through various legislations like the *Civil Procedure Act Cap 21*, the *Criminal Procedure Code, Cap 75*, the *Law Reform Act, Cap 28*, etc. its various appellate, review and revision jurisdictions. Those jurisdictions are supervisory in nature.
11. In the case of the Appellant’s original suit which was heard and a judgment rendered by the trial court, the *High Court* has already exercised its appellate supervisory jurisdiction vide *Nyeri HC Civil*

Appeal No 168 of 2012. The **High Court** heard and dismissed the appeal.

12. The Applicant exercised his right of second appeal vide **Court of Appeal Nyeri Civil Appeal No 25 of 2013**. That appeal was also heard and dismissed in a 15–page judgment.

13. Having thus exhausted his rights of appeal, the Applicant cannot be permitted to re-open up the matter all over again in this application. The application is misconceived and an abuse of the process of the court that should not be expected of an advocate of this court. Litigation must come to an end once the lawful processes have been exhausted.

14. In the circumstances I find no merit in the application. It is hereby dismissed with costs to the 1st Respondent. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF DECEMBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 15TH DAY OF DECEMBER 2017