



Mageeta Investments Limited v Sanjes Company Limited & 2 others (Environment & Land Case E082 of 2020) [2025] KEELC 3350 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E082 OF 2020**

CG MBOGO, J

APRIL 24, 2025

BETWEEN

MAGEETA INVESTMENTS LIMITED PLAINTIFF

AND

SANJES COMPANY LIMITED 1ST DEFENDANT

EMILY KITUR 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

RULING

1. Before me is the notice of motion dated 13th January 2025, filed by the plaintiff/applicant, and it is expressed to be brought under Section 3, 3A and 80 of the *Civil Procedure Act*, Order 9 Rule 9, Order 12 Rule 7, Order 40 Rules 1 and 2, Order 45 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, seeking the following orders:-
 1. Spent.
 2. That the honourable court be pleased to grant leave to the firm of Rashid Ngaira & Associates Advocates to come on record for the plaintiff after judgment.
 3. That in the alternative and further to prayer 2 supra, that this honourable court be pleased to dispense with leave for counsel to come on record on behalf of the plaintiff after judgment for purposes of this application and that the notice of change of advocates hereby annexed be deemed as duly and properly filed due to the nature of the urgency of this application.
 4. Spent.
 5. That pending the hearing and determination of this suit, this honourable court be pleased to issue an order of injunction restraining the respondents whether acting by themselves or



through their agents, servants, employees or such other person under their command from dealing, interfering, meddling with, registering, transferring, intruding, presenting themselves as proprietors, alienating, registering or presenting for registration any documents or in any manner tampering or dealing with the applicant's ownership, possession and/or occupation of all property known as L.R. No. 37/ 670 I.R. 84860 measuring nought decimal one two two eight (0.1228) Ha. along Masaba Road, Upper Hill area within Nairobi County.

6. Spent.
 7. That this honourable court be pleased to review and/or set aside the Orders issued on 16th December, 2021 dismissing the suit for want of prosecution and be pleased to reinstate the suit for its substantive hearing and determination.
 8. That the costs of this application be provided for.
 9. That this honourable court be pleased to grant or issue such other or further relief the court deems fit and expedient in the circumstances.
2. The application is premised on the grounds on its face, and further as detailed in the affidavit of the plaintiff/ applicant. The application is supported by the affidavit of Ajay Magon, the Director of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that it is the registered lessee of land known as LR. No. 37/670 I.R 84860 for a period of fifty years commencing 1st May, 2000, and that it has always been in possession thereof. The plaintiff/applicant made further deposition leading to the filing of this suit, and averred that on 1st September, 2020, it obtained injunctive orders against the defendants/respondents from interfering with the suit property. However, his previous advocates failed to attend court when required and on 16th December, 2021, the suit was dismissed for want of prosecution.
 3. The plaintiff/applicant deposed that its directors live outside the jurisdiction, which made it difficult for them to get updates from their previous counsel despite giving full instructions. Further, that the mistakes of counsel ought not to be visited upon an innocent litigant, particularly in this case where the plaintiff/applicant stands to suffer irreparable loss. It was further deposed that there are unresolved issues on the question of dual registration over the suit property, and this can only be done through a hearing.
 4. The plaintiff/applicant further deposed that despite the double registration of the suit property, it was established that the 1st defendant/respondent does not exist, and it follows that it cannot own property, and neither were the purported orders issued to it on 16th and 18th December, 2019 of any effect. Further, that the ultimate goal is to establish the validity of the title in this matter.
 5. The application was opposed by the replying affidavit of Peter Kennedy Ombati, the learned counsel for the 1st and 2nd defendants/respondents sworn on 4th February, 2025. The learned counsel deposed that there have been two applications seeking to vacate or set aside the orders dismissing the suit for want of prosecution with the latter application dated 13th April, 2022 withdrawn on 28th June, 2022 with costs to the defendants/respondents. Further, that whatever grounds are for seeking the setting aside of the orders, the requirement is that it be made without unreasonable delay, and the delay to bring the instant application 3 years later is inordinate, and inexcusable.
 6. The learned counsel deposed that on 16th December 2021, the court entertained arguments from both the plaintiff/applicant and the defendants/respondents, and the resultant decision is one that can be appealed against and not otherwise. Further, that this court is not seized of the jurisdiction to hear the instant application as it would be tantamount to sitting on an appeal of its own decision. It was



deposed that the plaintiff/ applicant has not highlighted any grounds for review under Order 45 of the Civil Procedure Rules.

7. The application was canvassed by way of written submissions. The plaintiff/applicant filed its written submissions dated 14th February, 2025 where it raised two issues for determination as follows: -
 1. Whether this honourable court is clothed with the jurisdiction to entertain the present application.
 2. Whether the plaintiff's application meets the threshold for setting aside and review of the decision dismissing the suit on 16th December, 2021.
8. On the first issue, the plaintiff/applicant submitted that pursuant to Article 162 (2)(b) of the Constitution, and Section 13 of the Environment and Land Court Act, this court is clothed with jurisdiction to hear and determine this claim.
9. On the second issue, the plaintiff/applicant submitted that Section 3A of the Civil Procedure Act gives this court powers to apply the overriding objections envisioned in Section 1A of the same Act. That in seeking review of the orders issued on 16th December, 2021, the plaintiff/applicant has discovered that the 1st defendant/respondent is not a registered company, and it is thus non-existent. That the dismissal of its case on 16th December 2021 validated the ghostly and fraudulent title held by the 1st defendant/respondent whose validity can only be tested by hearing both parties. Also, that this is an issue that has not been disputed at all, which leads to the question of where the learned counsel for the 1st and 2nd defendants/respondents derived authority to swear an affidavit. Further, it was submitted that the defendants/respondents have not demonstrated whether they stand to suffer any prejudice if the purported existence of the 1st defendant/respondent and its impugned title are put to test.
10. The 1st and 2nd defendants/respondents filed their written submissions dated 14th February, 2025 where they raised two issues for determination as listed below: -
 - i. Whether the applicant has met or satisfied the threshold for review of the order of dismissal as envisaged vide Order 45 Rule 1 of the Civil Procedure Rules.
 - ii. Whether the court has jurisdiction to set aside orders of dismissal of suit for want of prosecution under Order 17 Rule 4 of the Civil Procedure Rules.
11. On the first issue, the 1st and 2nd defendants/respondents submitted that the plaintiff/applicant has not shown that there is discovery of new and important matters of evidence, or error apparent on the face of record to warrant a review of the court's ruling delivered on 16th December, 2021. Further, they urged the court to note the inordinate delay in filing of the instant application which is over 3 years.
12. On the second issue, the 1st and 2nd defendants/respondents submitted that on 16th December 2021, the court dealt with the instant suit and dismissed it under the provisions of Order 17 Rule 4 of the Civil Procedure Rules, and a dismissal pursuant to this direction cannot be set aside. To buttress on this issue, the 1st and 2nd defendants/respondents relied on the case of Homeboyz Entertainment Limited v Secretary National Building Inspectorate & 2 others, ELC Case No. 43 of 2018. Further, that the 3rd defendant/respondent indicated in its defence that there is no register for the plaintiff applicant's grant of the suit property, and thus, there would be no need to reinstate the suit.
13. I have considered the application, replying affidavit and the written submissions of the respective parties. The issues for determination are as follows: -
 - i. Whether the plaintiff/applicant has established the grounds for review.



- ii. Whether the plaintiff/ applicant is entitled to the orders of injunction.
14. First and foremost, it is necessary to dispense with the legal representation of the plaintiff/ applicant by the firm of Rashid Ngaira & Associates. Taking into consideration that judgment was delivered in this matter on 16th December, 2021, it was necessary that the firm of Rashid Ngaira to obtain an order of the court to represent the plaintiff/ applicant after judgment. Prayer 2 of the application is thus allowed pursuant to the provisions of Order 9 Rule 9 of the Civil Procedure Rules.
15. Section 80 of the *Civil Procedure Act* provides as follows: -
- “ 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.”
16. Order 45 Rule 1 of the Civil Procedure Rules further provides:-
- “ 1. Any person considering himself aggrieved—
- (1) (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.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
17. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.
18. In the case of *Republic vs Director of Public Prosecution Ex-parte Josphat Sirma & 2 others* [2017] eKLR, the court held thus:-
- “ Order 45 Rule 1 (1) (b) of the Civil Procedure Rules sets out the parameters for an application for review. This is for purposes of avoiding a scenario where the review court



turns into appeal court over its own ruling or judgment. The court may only hear a new and important matter or evidence which was not within the knowledge of an applicant or could not be produced by him at the time when the order was passed.

12. Secondly, the court may only consider a mistake or error apparent on the face of the record. On this, the record must speak for itself or by itself without much explanation.

13. Thirdly, the court may consider any other sufficient reason.”

19. In Republic versus Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR, it was held,

“ 21. 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.”

20. In the case of National Bank of Kenya Ltd vs Ndungu Njau [1997] eKLR, it was held,

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

21. In its quest to revive this suit, the plaintiff/ applicant gave a detailed history leading to the filing of the suit, and its subsequent dismissal. The previous counsel on record were blamed for not bringing their client upto speed with regular updates on the case which was considered a mistake on the part of the counsel. The plaintiff/applicant sought review on the grounds that there are unresolved pending issues which need to be determined by this court including dual registration of the suit property and the non-existence of the 1st defendant/ respondent as confirmed by the Registrar of Companies.

22. While contending these arguments, the 1st and 2nd defendants/ respondents maintained that there are no grounds of review, and if there are any, there is inordinate delay in bringing forth this application. Equally, the 1st 2nd defendants/ respondents argued that there would be no need for reinstating the suit for the reason that the 3rd defendant/respondent confirmed in its defence that it does not hold any records of the plaintiff/ applicant’s ownership of the suit property. More importantly, they argued that on 16th December, 2021, the court heard arguments from both the plaintiff/applicant and the defendants/ respondents, and the court’s decision is one that only be appealed against and not otherwise.

23. Looking at the above provisions of the law and the cited authorities vis a vis the circumstances of this case, for an application for review to succeed, there ought to be an error apparent on the face of record, discovery of new and important information that could not have been obtained at the time of the hearing, and any sufficient cause.

24. In this case, the plaintiff/applicant has not made arguments on sufficient cause or any error apparent on the face of the record. Instead, the existence or the non-existence of the 1st defendant/respondent



in this case and the unresolved issues of ownership appears to be the basis of this application. Whereas, the existence or non-existence of the 1st defendant/ respondent would in my view form the basis of what can be considered as sufficient cause, the events that took place in court on 16th December, 2021 culminating in the court's decision are central to the determination of this application, and cannot be overlooked. In *Edney Adaka Ismail -vs- Equity Bank Limited* [2014] eKLR the court stated thus;

“It is true that the justice of the case mandates, mistake of advocate even if they are blunders, should not be visited on the clients when the situation can be remedied by costs. However it is not in every case that a mistake committed by an advocate would be a ground for setting aside orders of the court.”

25. On 16th December, 2021, when this matter was slated for hearing, the plaintiff failed to attend court to present evidence and prosecute its case. This led the court to arrive at the determination which saw the dismissal of the suit for want of prosecution under Order, 17, Rule 4 of the Civil Procedure Rules. What elements of the court's decision are then fit for review. I am afraid there is none, if at all the plaintiff/ applicant appeared in court for the hearing and produced evidence, the discovery of new and important information would suffice.

26. Order 17 Rule 4 of the Civil Procedure Rules provides that:

“Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the suit forthwith.”

27. The court having pronounced itself on the first issue, there would be no need to delve into the second issue. From the above, this court finds no merit in the notice of motion dated 13th January, 2025 except for prayer 2, and it is hereby dismissed with no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 24th DAY OF APRIL, 2025.

HON. MBOGO C.G.

JUDGE

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ngaira for the Plaintiff/Applicant – present

Ombati Opondo & Co. Advocates for the 1st and 2nd Defendants/Respondents – absent

