



Republic v Land Disputes Tribunal-Kerugoya & 3 others; Njogu (Exparte) (Environment and Land Judicial Review Case 7 of 2012) [2022] KEELC 2181 (KLR) (22 April 2022) (Ruling)

Neutral citation: [2022] KEELC 2181 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 7 OF 2012**

EC CHERONO, J

APRIL 22, 2022

BETWEEN

REPUBLIC APPLICANT

AND

LAND DISPUTES TRIBUNAL-KERUGOYA 1ST RESPONDENT

LUCIA WANGU KARIMI 2ND RESPONDENT

ESTHER WAMUTIRA KARIMI 3RD RESPONDENT

JAMES KARIMI MIANO 4TH RESPONDENT

AND

LUCY MUMBI NJOGU EXPARTE

RULING

1. By a Notice of Motion dated January 20, 2020, the 2nd, 3rd and 4th Respondents are seeking the following orders;
 1. That the Honourable court be pleased to grant leave to the firm of R. Muthike Makworo & Co. Advocates to come on record for the 2nd, 3rd, & 4th Respondents in place of M/S Wangechi Munene & Co. Advocates.
 2. That the Honourable Court be pleased to order for the review and setting aside of the order made on 23rd June 2006 and the subsequent order made on July 3, 2013.
 3. That the Honourable Court pleased to order that the land parcel number Mutira/Kaguyu/3704 and land parcel Number Mutira/kaguyu/3705 be reconstituted back to the original parcel Number Mutira/Kaguyu/1290 in the name of the 4th respondent.



4. That the Honourable Court be pleased to grant any further relief in favour of the Respondents for ends of justice to be met.
 5. That the costs of this application be provided for.
2. The application is supported by grounds apparent on the face of the application and the supporting affidavit of James Karimi Miano and annexures. The said application is opposed with a Replying affidavit sworn by Lucy Mumbi Njogu on 10/03/2020. When the application came up for hearing on 2nd November 2021, the parties agreed to canvass the same by way of written submissions.

Applicant's Summary of Facts

3. The 4th Applicant in her affidavit evidence deposed that the land parcel Number Mutira/Kaguyu/1290 belonged to her and that a dispute arose over the same which was referred to the Land Disputes Tribunal who rendered itself on March 18, 2003. A copy of proceedings is attached and marked 'JKM 2'.
4. The Respondent was dissatisfied and filed judicial Review proceedings vide a Notice of Motion application dated June 2, 2004 (Misc. Application No 536 of 2004 and now ELC JR No 7 of 2013) (Kerugoya) seeking orders of Certiorari and Mandamus to quash the proceedings and the award by the Tribunal of 18/03/2003.
5. On June 23, 2006, the Honourable Court rendered itself and granted the orders sought. The essence of the orders is to the effect that the award of the Land Disputes Tribunal was set aside. By a Notice of Motion dated June 12, 2007 Lucy Mumbi Njogu, the respondent herein had sought an order for the removal of cautions registered on LR No Mutira/kaguyu/1290 to give effect to the orders of this Honourable Court issued on 23rd June, 2006. In a ruling delivered on 3rd July 2013, this Honourable Court granted the application and ordered the removal of all cautions registered against land parcel No. Mutira/kaguyu/1290 to give effect to the orders of this Court dated June 23, 2006.
6. The Applicant now wants this Court to review those orders on grounds that those orders of June 23, 2006 and July 3, 2013 were made in error and that the Applicant misrepresented the facts before the Court.

Respondent's Summary Of Facts

7. The Respondent filed a Replying Affidavit sworn on 10th March, 2020 in which she deposed as follows:
 1. That to review and/or set aside the orders made on June 23, 2006 and all subsequent orders therefrom is a waste of time.
 2. That the reasons and grounds given by the 2nd, 3rd, and 4th Respondents/Applicants should not warrant granting of the orders sought in the application.
 3. That the 4th Respondent/Applicant was very much aware of all transpirations and therefore the application before court is an afterthought and the same ought to be dismissed with costs.
 4. That the 4th Respondent/Applicant knows everything that even the bill of costs in this case has already been taxed amounting to Ksh 134,885/= which was taxed on September 28, 2017.
 5. That it is more than 14 years since 2006 meaning the application before Court is time barred.
 6. That if the orders sought succeed, the justice will be delayed and justice delayed is justice denied.



7. That if it were not the influence of the 2nd and 3rd Respondents/Applicants, the 4th Respondent/Applicant could not have filed the application before Court.
8. That the Kerugoya Civil Suit No. 246 of 2017 was filed sometimes in late 2017 and the Defence filed immediately, then how comes the application got filed in January, 2020. Still by the same Advocate.

Legal Analysis and Decision

8. I have considered the Notice of Motion application dated 20/01/2020, the Supporting Affidavit sworn by James Karimi Miano and the annexures thereto. I have also considered the submissions both in support and in opposition thereto. The substantive orders being sought in the application is for the Review of the orders of this Honourable Court made on June 23, 2006 and subsequently on July 3, 2013. Order 45 Rule 1 of the [Civil Procedure Rules](#) which regulates the review and setting aside of court orders provides as follows-;
 - 1(1) Any person considering himself aggrieved
 - (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, desire 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.
 - 2(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed”.
9. From my reading of the rules, an application for review is a discretionary power which can be exercised judicially if the following elements/grounds are present-;
 1. The discovery of a new and important matter or evidence which could not be produced and which was not within his/her knowledge despite the exercise of due diligence;
 2. On account of some mistake or error apparent on the face of the record, or;
 3. For any other sufficient reason;
 4. The application for review shall be made without unreasonable delay.
10. The grounds for the application under review is that there is an error apparent on the face of the record. Whether there exists a mistake or error apparent on the face of record can be discerned from the application and/or prayers sought and the subsequent orders granted by the trial judge. From



the Notice of Motion application dated June 2, 2004, Justice Emukule (as he then was) granted the following orders-;

1. That the Respondents and the Applicant do apply before the appropriate Land Control Board for the subdivision of Mutira/Kaguya/120 land.
 2. That the respondents do transfer one portion to the Applicant in terms of the Sale Agreement between the Applicant and the seller.
11. By another Notice of Motion dated March 26, 2007, this Court was approached by the Respondent for purpose of effecting the orders given on June 23, 2006. Upon hearing the parties and the materials placed before it, this Court allowed the said application in the following terms-;
1. That the Deputy Registrar of the High Court of Kenya be and is hereby authorised to sign all necessary documents pertaining to the transfer of land parcel No Mutira/Kaguyu/1290.
 2. That there be no Order as to costs.
12. Fully conversant with the two court orders and in an attempt to deny the Respondent the fruits of the orders given, lodged a caution on the suit land parcel No. Mutira/Kaguyu/1290. That prompted the Respondent to file a Notice of Motion application dated 12/06/2007 seeking the removal of the said caution. In a ruling delivered on 3rd July 2013, the said application was determined by Justice B.N. Olao who ordered as follows-;
1. That all cautions registered against land parcel Mutira/Kaguyu/1290 be removed so as to give effect to the Order of this Court of June 23, 2006.
 2. That Costs of this Application be borne by the 2nd, 3rd, and 4th Respondents.
13. Based on these facts, I find that the application for review on grounds of a mistake or an error apparent on the face of record is misconceived and an afterthought as there is no mistake or error apparent on record. I agree with counsel for the Respondent that the present application is nothing but a ploy to deny the Respondent the fruits of orders given in her favour and to defeat the ends of justice.
14. The upshot of my findings is that the Notice of Motion dated 20/01/2020 lacks merit and the same is hereby dismissed with costs. It is so ordered.

**RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS
22ND APRIL, 2022.**

HON E.C. CHERONO

ELC JUDGE

