



Nkugwe Investment Limited v Kihara & 3 others (Sued on their on behalf and on behalf of the Estate of the Late Paul Samwuel Kihara) (Environment & Land Case 512 of 2005) [2022] KEELC 2884 (KLR) (24 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2884 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 512 OF 2005**

JA MOGENI, J

MAY 24, 2022

BETWEEN

NKUGWE INVESTMENT LIMITED PLAINTIFF

AND

JANE NJERI WANJIRU KIHARA 1ST DEFENDANT

JOHN WAIGANJO KIHARA 2ND DEFENDANT

VICTOR NJUGUNA KIHARA 3RD DEFENDANT

KENNETH WAIGANJO KIHARA 4TH DEFENDANT

**SUED ON THEIR ON BEHALF AND ON BEHALF OF THE ESTATE OF THE
LATE PAUL SAMWUEL KIHARA**

RULING

1. I have before me for determination a Notice of Motion application dated 12/04/2022 brought under Order 52 Rule 14(1) c of the *Civil Procedure Rules*. By the said application, Messrs Lawrence M. Mbaabu & Associates pray for orders as follows:-
 - a. Spent
 - b. Spent
 - c. That this Honorable Court be pleased to review its judgment as delivered by Hon. Lady Justice J.A Mogeni in this suit on 9th March 2022 to the extent that the balance of the purchase price of the suit property be deposited to this Honorable Court



- d. That upon the grant of Order No. 3 above, this Honorable Court be pleased to direct the Deputy Registrar of this Court to provide the Plaintiff with this Honorable Court's Bank Account details
 - e. That this Honorable Court be pleased to review its judgment as delivered by Hon. Lady Justice Mogeni in this on 9th March 2022 and extend the period within which the plaintiff is to pay the balance of the purchase price to 60 days after the provision of the Judiciary's Bank Accounts details by the Deputy Registrar.
 - f. That the costs of this Application be borne by the Defendants.
2. The Application is by the Affidavit sworn by Lawrence Muriithi Mbabu and advocate of the high court of Kenya. The grounds are that the judgment was delivered on 9/03/2022, the Plaintiff sought the bank details of the Defendant or the Law Firm's bank detail through the Law Firm on record Robson Harris Advocates to allow them to deposit the balance of the purchase price. To date the bank details have never been provided.
 3. The application is based on the grounds that the plaintiff is fearful and apprehensive that time is of essence and the plaintiff will suffer irreparable loss if the 30 days lapse before he pays the balance of the purchase price. Further, that due to the delay in getting the bank details the plaintiff seeks a review of the court judgment for 60 days which will start to run once the Deputy Registrar supplies the Judiciary Bank Account details .
 4. The plaintiff has applied to have the balance of the purchase price of the suit property be deposited to this Honorable Court and to have the Deputy Registrar provide details of the Judiciary Bank Account.
 5. Section 80 of the *Civil Procedure Act* provides that:-
 - Any person who considers himself aggrieved-
 - a) By a decree or order in which an appeal allowed by this Act, but from which no appeal has
 - 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.
 6. Further, Order 45 Rule 1 of the Civil Procedure Rules provides;
 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, 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.
 7. It is apparent that the requirements for a review of the court's orders are that;



- (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - (b) There was a mistake or error apparent on the face of the record; or
 - (c) There were other sufficient reasons; and
 - (d) The application must have been made without undue delay.
8. Upon reviewing the pleadings and submissions by the parties herein I have determined that there two issues for determination is; Whether the applicant has met the requirements for review as set out under Order 45 Rule 1 and Whether the applicant can deposit the balance of the purchase price through the Judiciary Bank Account. has met the requirements for review as set out under Order 45 Rule 1.

Whether the applicant has met the requirements for review as set out under Order 45 Rule 1.

9. In *Tokesi Mambili and others vs Simion Litsanga* [2004] eKLR the court held as follows:-
- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
 - ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.
10. The three limbs that Order 45 which are discernible are these:
- a) Discovery of new and important matter or evidence.
 - b) Mistake or error apparent on the face of the record.
 - c) Any other sufficient reason.
11. From these provisions it is clear that, Order 45 sets out the conditions to be met in a review of a court Order or Judgment.
12. In *Republic –vs- Public Procurement Administrative Review Board & 2 Others* the court held that:-
- Section 80 gives the power of review and Order 45 sets out rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review.
13. In the present application, though the plaintiff has not demonstrated that there has been discovery of new and important matter or evidence, or that there is an error apparent on the face of the record. Review can also be allowed for any other sufficient reason. The expression sufficient reason means a reason sufficiently analogous to those specified in the rule.
14. In *Shanzu Investments Limited v Commissioner for Lands* (Civil Appeal No 100 of 1993) the Court of Appeal held that:-
- “Any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the court by section 80 of the *civil procedure act*: and that the other grounds set out in the rule did not



in themselves form a genus or class of things which the third general head could be said to be analogous.”

15. The orders the plaintiff seeks to review against were issued on 09/03/2022. The application was filed on 18/03/200, 9 days after the orders were given. The orders were to be complied with within 30 days. The applicant has explained why the plaintiff has been unable to comply with the order. I find the period the period that the plaintiff filed the application to be proper without inordinate delay and the reason provided also reasonable.
16. Further, there is nothing in order 45 rule 1 of the Civil Procedure Rules to preclude this court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct errors or mistakes committed during the making of the decision.
17. The Defendant despite being notified to provide the details of the bank account failed to comply with this request. The plaintiff cannot therefore be faulted for failing to comply within the stipulated period of 30 days. I find that the reasons advanced by the Plaintiff are sufficient to vary the orders issued herein.
18. The upshot of the foregoing is that the application dated 18/03/2022 is allowed in terms of prayers (c) and (d). In terms of prayer (e) this court grants it but only for a further 30 days on condition that the plaintiff shall deposit the balance of the purchase price in court within the 30 days from the date hereof.
19. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI ON THIS 24TH DAY OF MAY 2022.

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MOGENI J

JUDGE

In the Presence of

..... Plaintiff

..... Defendants

