



**Ramogo & another v Integrity Holdings Limited (Environment & Land
Case 173 of 2019) [2022] KEELC 65 (KLR) (24 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 65 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 173 OF 2019**

BM EBOSO, J

MAY 24, 2022

BETWEEN

JOEL ADUMA RAMOGO 1ST PLAINTIFF

MARY ATIENO ONDORO 2ND PLAINTIFF

AND

INTEGRITY HOLDINGS LIMITED DEFENDANT

RULING

1. The plaintiff initiated this suit through a plaint dated 20/11/2019. Their case is that they own land parcel number Dagoretti/Kinoo/6181 on which they have erected a block of residential flats for rental. The defendant owns land parcel number Dagoretti/Kinoo/5214 which abuts their land. At all material times, the defendant embarked on construction of residential flats on its parcel of land. The defendant's new development completely blocked part of their premises and denied several units any form of light, rendering them completely dark. As a consequence of that, tenants started vacating their premises, and they faced the risk of not being able to service the loan they took to develop their property. Consequently, they sought, among other reliefs, a permanent injunction restraining the defendant against continuing with the construction works.
2. Together with the application, they brought a notice of motion dated 20/11/2019, seeking an interlocutory injunctive order restraining the defendant against continuing with the construction works, pending the hearing and determination of the suit. Gacheru J heard the application and rendered a ruling on it, dated 15/4/2021. She found the application merited and allowed it. On or about 21/5/2021, the defendant brought a notice of motion dated 11/5/2021, seeking a review of the orders issued by Gacheru J on 15/4/2021. The said application is the subject of this ruling.
3. The application was supported by an affidavit sworn on 11/5/2021 by Charles Kuria, a director of the defendant company. The applicant's case was that the impugned ruling was procured through false



and unproven allegations by the plaintiff; that the challenges faced by the plaintiffs are as a result of their own doing and ignorance of the County architectural approvals; that the impugned development had been completed and the premises were fully occupied; and that the orders granted on 15/4/2021 are in vain and should therefore be varied and/or set aside.

4. The application was canvassed through written submissions dated 3/3/2022, filed through the firm of Kairu Kimani & Co Advocates. Counsel for the applicant submitted that the single issue falling for determination in the application was whether the application satisfied the conditions for review or setting aside of orders of the court. Counsel cited Order 45 rule 1 of the Civil Procedure Rules and submitted that the application satisfied one condition – discovery of new and important matter of evidence. Counsel contended that by the time the impugned ruling was rendered, the defendant had not obtained the architectural drawings and approvals to show that they had adhered to the approvals from the County Government. Counsel added that new and important information had emerged showing that the plaintiff had violated their approved building plans. Counsel urged the court to grant the review orders on that basis.
5. The plaintiffs filed written submissions dated 15/2/2022 through the firm of Kinyanjui, Kirimi & Co Advocates. Counsel for the plaintiffs identified the issue falling for determination as whether this court should stay/vary, review and/or set aside its ruling and orders issued on 15/4/2021. Counsel for the plaintiff cited Order 45 rule 1(b) of the Civil Procedure Rules and Section 80 of the [Civil Procedure Act](#) and submitted that the object of the above provisions was neither to enable the court to write a second judgment nor to give a second inning to a party who had lost the case because of his negligence or indifference. Counsel added that a party seeking a review must show that there were no remiss. Counsel added that the defendant had always had the evidence and facts and was at liberty to produce the evidence at the hearing of the application giving rise to the impugned ruling. Counsel urged the court to reject the application.
6. I have considered the application, the response to the application, and the parties’ respective submissions on the application. I have also considered the relevant legal frameworks and jurisprudence. The single issue falling for determination in this application is whether the application meets the criteria upon which our trial courts exercise jurisdiction to review rulings/ orders/ judgments. I will make brief pronouncements on that issue.
7. The review jurisdiction of this court is regulated by the framework in Section 80 of the [Civil Procedure Act](#) and Order 45 rule 1 of the Civil Procedure Rules. 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.”
8. Order 45 rule 1 of the Civil Procedure Rules 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, 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.”
9. Suffice it to state that review jurisdiction is exercised on the basis of new and important matter or evidence which, on exercise of due diligence, was not within the knowledge of the applicant or could not be produced by the applicant at the time when the impugned order or decree was made. Further, review jurisdiction is available for the purpose of correcting some mistakes or error apparent on the face of the record. Review jurisdiction is not available to an applicant who merely seeks to have a second biting at the cherry or who had the opportunity to avail all the necessary evidence but elected to be remiss.
 10. In the application under consideration, the defendant had their requisite development plans [if any]. The law required them to submit the plans to the approving authority. Upon approval, the plans were required to be available to the general public, including the defendant who was the developer. It cannot, in the circumstances, be said that the defendant’s development plans are new evidence that the defendant could not produce upon exercise of due diligence during the hearing of the application that culminated in the impugned ruling.
 11. The defendant contended that it did not have access to the plaintiff’s approved development plans. The defendant had the right to issue and serve a notice to the plaintiff to produce their approved development plans at the hearing of the application leading to the impugned ruling. They elected not to compel the plaintiff to produce their approved development plans. Secondly, the defendant was at liberty to procure copies of the plaintiff’s approved development plans from the approving authority. They elected not to do so. In the circumstances, I do not think the defendant exercised due diligence to access the plaintiff’s approved development plans.
 12. The result is that the court is not satisfied that the defendant has met the criteria upon which our courts exercise review jurisdiction.
 13. An equally important consideration is that the impugned orders were issued under Order 40 rule 1 of the Civil Procedure Rules on 15/4/2021. It is now more than twelve months since the impugned orders were issued. The court has not been invited to extend the validity of the orders beyond the period of twelve months prescribed by the law.
 14. The totality of the foregoing is that there is no merit in the notice of motion



dated 11/5/2021. The same is rejected. The defendant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 24TH DAY OF MAY
2022**

B M EBOSO

JUDGE

In the Presence of: -

Mr Bariki holding brief for Mr Kirimi for the Plaintiffs

Court Assistant: Ms Lucy Muthoni

