



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwongo v Mukami (Environment & Land Case 48 of 2013)  
[2022] KEELC 2940 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2940 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 48 OF 2013**

**CK NZILI, J**

**MAY 18, 2022**

**BETWEEN**

**CYPRIANO KIMATHI MWONGO ..... APPLICANT**

**AND**

**JOYCE MUKAMI ..... RESPONDENT**

**RULING**

1. The court is asked to review the judgment herein and lift the inhibitions placed on L.R NO. Nkuene/ L-Mikumbune 622. The reasons given are that the orders lapsed, there is need to review them and the encumbrance serves no purpose given the applicant was willing to refund the respondent her money.
2. The application is supported by an affidavit sworn on 17.1.2022 by Cypriano Kimanthi Mwongo. It is averred the respondent was to pay the applicant Kshs.85,000/= for him to transfer the land after which the executive officer was to sign the transfer documents and that the inhibition to remain in force until compliance with the said orders.
3. It was averred that it was now over six years and no action had taken place; that the orders had no time limits and should therefore be vacated so that the applicant could deal otherwise with the land more so now that the was ready to refund the money paid to him and recover the land which he still possess at up to date.
4. The application was opposed through replying affidavit sworn by Joyce Mukami on 7.2.2022. The reasons given are that it was the appellant who had frustrated the implementation of the decree as per the judgment delivered on 31.5.2016 by ignoring, refusing or failing to obey it through accepting the sum due following an application dated 25.11.2016.
5. It was averred that during the same time the applicant moved to the Court of Appeal seeking to appeal out of time but the same was dismissed.



6. The respondent averred that she was opposed to the refund due to the huge costs incurred and would suffer loss and damage.
7. Lastly the respondent urged the court to give appropriate directions on the pending application dated 25.11.2016.
8. Order 45 *Civil Procedure rules* as read together with Section 80 *Civil Procedure Act* grants the court powers to review its orders or decrees which have not been appealed from on three key grounds; new and important issues which were not within the possession of the applicant when the order or decree was made; error apparent on the face of the record and where there was sufficient cause. Additionally the application must also be made without any unreasonable delay.
9. In this matter the reasons given are that 6 years' time had lapsed, the inhibition was encumbering the applicant's property for nothing, he was willing to refund the money, there were no time limits given and the respondent was hanging on the orders.
10. By an application dated 25.11.2016, the plaintiff sought to pay Kshs.131,000 in accordance with the judgment. The same came for interpartes hearing for 14.12.2016 and the defendant was directed to respond within 21 days and a date for directions be taken at the registry on priority basis.
11. The defendant failed to respond to that application as ordered by the court. Similarly no action was taken until the instant application was filed on 28.1.2022.
12. Following the judgment, a notice of appeal dated 3.6.2016 was filed by the applicant and a letter dated 11.7.2016 lodged requesting for the proceedings.
13. A decree was issued dated 21.7.2016 in which time was extended to seek for a consent from the land control board in order to subdivide and transfer to the applicant of 0.20 ha from L.R Nkuene/Lower Mikumbune/622. The decree also indicated the balance of purchase price of Kshs.85,465 to be paid to the L.K Kiara Advocates after the payment Executive officer was to sign the transfers. The inhibition order was to remain in force unless for purposes of implementing the decree.
14. The applicant was given a certificate of delay dated 28.10.2016 to enable him pursue the appeal at the Court of Appeal.
15. Given the foregoing can the grounds alluded by the applicant fit in the three grounds for review? Has the applicant made a case for this court to grant the orders sought?
16. It is quite obvious the applicant chose the path of preferring an appeal soon after the judgment was read. Once the applicant chose that path, Order 45 *Civil Procedure Rules* became unavailable to him.
17. On that account alone this application must fail. The respondent has however said that the application to appeal out of time was dismissed.
18. Assuming the applicant had a right of review and given that there is a second prayer for the lifting of the inhibition orders there is no evidence that the applicant complied with the conditions as set out in the judgment and the decree dated 21.7.2016.
19. An attempt to implement the judgment by the parties was the application dated 25.11.2016 in which the plaintiff said she was unable to implement the decree after she found out another inhibition order had been entered in case no. 949 of 2003 and decree in appeal no. 5 of 2007, where the respondent was ordered to pay one Cypriano M'Rarama Mikua Kshs.13,000/= hence making the implementation difficult.



20. The plaintiff was offering a way forward by depositing Kshs.13,000 to Cypriano M’Mikua so that the judgment herein could be implemented. The defendant failed to take up the offer and or an alternative proposal in order to implement the decree.
21. It is therefore misleading for the defendant to say that there was an error by the court issuing an inhibition for nothing, without timelines and claiming the plaintiff has never taken any action towards implementing the decree
22. Given the application is still pending six years down the line there is no indication that the applicant responded to it especially after an offer was made to fast track the implementation of the judgment.
23. The applicant took the path of an appeal. He cannot turn around and seek for review on the grounds that there has been inordinate delay and or inaction on the part of the respondent.
24. In sum I find no merits in the application. The same is dismissed with costs to the respondent. Meantime, I direct a hearing date be taken for the application dated 25.11.2016 to be heard on priority basis. The respondent is hereby given 7 days to respond to it.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 18TH DAY OF MAY, 2022**

**In presence of:**

No appearance

**HON. C.K. NZILI**

**ELC JUDGE**

