



**Ndambiri v Kareithi & another (Environment & Land Case
78 of 2017) [2022] KEELC 3039 (KLR) (13 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3039 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 78 OF 2017**

EC CHERONO, J

MAY 13, 2022

BETWEEN

THOMAS NGUO NDAMBIRI PLAINTIFF

AND

FAITH FIDES KARUANA KAREITHI 1ST DEFENDANT

WILFRED MUCHOKI MUNDIA 2ND DEFENDANT

RULING

1. The 1st Defendant/Applicant filed a Notice of Motion dated 29th November, 2021 in which she seeks the following orders: -
 - a. That this Honourable Court be pleased to review the judgment it delivered on 12th November, 2021.
 - b. That costs of this application be provided for.
2. The application is premised on the grounds set out on the face of the application supported by the Affidavit of the 1st Defendant sworn on 29th November, 2021.
3. The application is opposed by the plaintiff vide a replying affidavit sworn on 1st February, 2022.
4. When the application came up for hearing on 2nd February, 2022, the parties agreed to have the same canvassed by way of affidavit evidence and written submissions.

1st Defendant/Applicant's Case

5. The 1st defendant's case is that she had filed Wang'uru PM'S Civil Case Number 67 of 2017 where she had sued the plaintiff herein for an order of subdivision of land parcel Ngariama/Lower/Ngariama/3885 and transfer of 1.0 Hectares.



6. She stated that the said Wang'uru case was consolidated with this matter and was treated as a counterclaim.
7. She stated that from the pleadings filed, it is evident that she entered into a sale agreement dated 4/3/2017 with the plaintiff and the amount of consideration was Kshs. 400,000/-
8. She stated that she also entered into another agreement where the plaintiff sold her an additional 1.0 hectares out of the suit land for Kshs. 1,000,000/-
9. She stated that this Honourable Court, vide its judgment delivered on 12th November, 2021 declined to allow her counter claim for transfer of 2.5 acres out of the suit land but ordered a refund of Kshs. 1,000,000/-
10. She stated that she had given a total of Kshs. 1,400,000 to the plaintiff and it is in the interests of justice that judgment be reviewed so as to reflect that the plaintiff refunds a sum of Kshs. 1,400,00/- plus interest as per the sale agreements dated 4.3.2017 and 8.3.2017.
11. She stated that there is an error apparent on the face of the record that needs to be rectified and hence the application which she prays be allowed.

Respondent's /Plaintiff's Case

12. The plaintiff stated that the judgment is very clear on the orders issued and that this Honourable Court explained in its judgment the reasons for his decision.
13. She stated that at page 18, paragraph 75 of the said judgment, the Honourable Judge found that the sale agreements were produced as evidence during the hearing and the trial judge confirmed in the impugned judgment and that she stands to suffer double jeopardy if the orders sought are granted.
14. She stated that being a widow with no source of income, it is only fair that the orders sought is disallowed and the application is dismissed.
15. She stated that there is no error apparent on the face of the record as alleged since the judgment as delivered is extremely very clear.
16. She prayed that the application in its entirety be dismissed with costs as it lacks merit and is an abuse of the courts process.

Analysis

17. I have considered the instant application, the supporting affidavit and the annexures thereto.
18. This application has brought his under Order 45 Rule 1 of the *Civil Procedure Rules* which provides as follows: -

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.



19. The basis of the applicants' case is that there is some mistake or error apparent on the face of the record in that she had given a total of Kshs. 1,400,000 to the plaintiff and it is in the interests of justice that judgment be reviewed so as to read that the plaintiff refunds a sum of Kshs. 1,400,000/- plus interest as per the sale agreements dated 4.3.2017 and 8.3.2017.

20. In the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR the Honourable Court held as follows pertaining the definition of a mistake or error apparent on the face of the record: -

“ 18. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. To put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

21. I have looked at the Complaint dated 18th May, 2017 in Wanguru PMCC 67 of 2017 which was consolidated with this court's file and treated as a counterclaim. The Plaintiff therein who is the applicant herein had sought an order for subdivision of land parcel no. Ngariama/Lower-Ngariama/3885 and for the transfer of 1.0 Ha in her name as set out in paragraph 4 as follows: -

“sometimes on the March 2017, the Defendant through a written agreement agreed to sell a portion of 1.0Ha out of land parcel No. Ngariama/Lower-Ngariama/385 to the plaintiff at a consideration of Kshs. 1,000,000 of which he (Defendant) acknowledged the whole execution of the agreement.”

22. It is therefore evident that the applicant is expanding her claim through this application for review. What the applicant claims to be a mistake in my view does not fall within the meaning of a mistake or error apparent on the face of the record as provided under Order 45 Rule 1 of the Civil Procedure Rules.

23. In the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* (supra) the court held that before allowing an application for review, the court would have to do a detailed examination, scrutiny and elucidation either of the facts or the legal position as the error is not self-evident and detection therefore requires long debate and process of reasoning.

Conclusion

24. In view of the foregoing I find the application dated 29th November, 2021 lacking 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 13TH MAY, 2022.

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HON. E.C. CHERONO



ELC JUDGE

In the presence of;

Ms Makazi holding brief for Wanjiru Waweru for the Applicant

Plaintiff/Respondent-----absent

Kabuta C/A.

