



**Kimaru & another v Karinga & another (Environment & Land Case
157 of 2017) [2022] KEELC 4907 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 4907 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 157 OF 2017
L WAITHAKA, J
JUNE 16, 2022
(FORMERLY NYERI HCC NO. 69 OF 1974)**

BETWEEN

GICHUKI KIMARU (DECEASED) 1ST PLAINTIFF

ZABLON KIRUGUMI (DECEASED) 2ND PLAINTIFF

AND

SOLOMON GICHUKI KARINGA 1ST DEFENDANT

NYERI LAND REGISTRAR 2ND DEFENDANT

RULING

1. On August 4, 2018 this court ordered the defendant/applicant to serve a hearing notice for his notice of motion dated April 20, 2017 for hearing on June 12, 2018.
2. On June 12, 2018 this court ordered the defendant/applicant to fully comply with the orders issued on August 4th, 2018 requiring him to serve the plaintiffs/respondents before setting down the application for hearing. On the same day, (June 12, 2018) the court fixed the defendant/applicant's application dated June 8, 2018 seeking the court's approval of appointment of John Githinji Wangondu as an agent to act on behalf of the defendant/applicant for hearing on July 3, 2018.
3. On July 3, 2018, the court dismissed the defendant/applicant's application dated June 8th, 2018, seeking approval of John Githinji Wangondu as the defendant/applicant's agent, for none attendance.
4. By an application dated March 12, 2019 the defendant/applicant moved the court for review of the orders made in the application dated April 20, 2017 requiring him to serve the respondents with the application before he could be allowed to prosecute the application and the order made on July 3, 2018 dismissing his application dated June 8th, 2018 seeking approval of John Githinji Wangondu as



his agent in this case. (the dates cited in the application have been corrected to accord with the correct dates as per the court record).

5. The application is premised on the grounds that the court erred by dismissing the applications and that there is an error apparent in the court record necessitating review of the orders.
6. As pointed out herein above, the orders of April 4, 2018 and those of June 12, 2018 were for service of the defendant/applicant's application dated April 20, 2017 on the respondents. Since the only order issued by the court in respect of that application is for service of the application on the respondents or their legal representatives and given the fact that the court cannot proceed with the application in the absence of proof of service on the respondents, there is nothing to review concerning those orders. If the defendant/applicant has challenges effecting service on the respondents or their legal representatives, he should apply for substituted service instead of pushing to be allowed to proceed with the case in the absence of the respondents or the respondents' legal representatives yet the orders sought are potentially prejudicial to the respondents.
7. With regard to the order made on July 3, 2018 dismissing the defendant/applicant's application dated June 8, 2018 for none attendance, the defendant/applicant explains that he did not attend court on the day fixed for hearing of the application because he had filed a notice of withdrawal of the application on the ground that he had filed a notice of appeal for the same. The notice was filed on June 28, 2018.
8. Whilst the said notice of withdrawal would have formed a good ground for stay of hearing of the application if it had been drawn to the attention of the court pending the outcome of the appeal, cognizance of the fact that the court had not granted any substantive orders to warrant the intended appeal (the court had merely ordered the application to be served for hearing), this court wonders what appeal the defendant/applicant intended to file. There being no explanation of what became of the intended appeal and on account of the time the defendant/applicant took to apply for review (over six months), which period is in the circumstances of this case inordinate and unexplained, I find that the defendant/applicant has not timeously applied for review as required by order 45 rule 1 of the [Civil Procedure Rules](#).
9. As would be demonstrated shortly hereunder, there is another reason why the defendant/applicant's application must fail. This is the conduct of the defendant/applicant of filing and prosecuting a multiplicity of applications when the court record suggests that he may have exhausted his legal remedies. I say so because, in his application dated April 20, 2017 the defendant/applicant seeks orders based on a decree that was set aside by the court on the ground that he obtained it fraudulently. In that regard see the ruling of JVO Juma J (as he then was) delivered on June 27, 2003 in Nyeri HCCC No 69 of 1974 where the judge observed: -

“The respondent (the respondent is the defendant/applicant herein) knew that the decree he obtained in HCCC No 69 of 1994 had been stayed by the court as a result of the consent orders. He attempted to set aside the order but the same was dismissed. He then came to court and proceeded to execute the same order that had been stayed and which the court refused to set aside. By doing this, it is not only unethical but also fraudulent and therefore criminal.....It is immaterial that other owners of the subdivisions are not in court since the court is only putting right to what was fraudulently done....”
10. That ruling/order whose effect was to set aside the orders issued in favour of the defendant/applicant has never been set aside or overturned on appeal. There is, in fact, no pending appeal in respect thereof.
11. Despite existence of those orders, the defendant/applicant has engaged the court in numerous applications calculated at enforcement or execution of the orders issued in his favour in HCCC No



69 of 1974 which orders have since been set aside rendering his applications for enforcement of those orders bad in law for want of substratum.

12. By seeking to be allowed to proceed with his application for execution of a none existent decree, the defendant/applicant appears to be advancing his fraudulent scheme that was thwarted by the court.
13. In view of the foregoing, I find the defendant/applicant's activities to be abuse of the court process. He should desist lest he be issued with a notice to show cause why he should not be declared a vexatious litigant.
14. The upshot of the foregoing is that the defendant/applicant's application dated March 12, 2019 is found to be lacking in merits and dismissed with no orders as to costs as it was undefended.
15. Orders accordingly.

DATED AND SIGNED AT ITEN THIS 9TH DAY OF MAY, 2022.

L. N. WAITHAKA

JUDGE

READ, SIGNED AND DELIVERED AT NYERI THIS 16TH DAY OF JUNE, 2022.

J. O OLOLA

JUDGE

