Multi –Equipped Limited v Registrar of Titles Nairobi & another (Environment and Land Judicial Review Case E010 of 2024) [2025] KEELC 3195 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3195 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E010 OF 2024

TW MURIGI, J

APRIL 4, 2025

BETWEEN

MULTI –EQUIPPED LIMITED ..... EXPARTE APPLICANT

AND

THE REGISTRAR OF TITLES NAIROBI ..... 1ST RESPONDENT

THE CHIEF LAND REGISTRAR ..... 2ND RESPONDENT

RULING

1. Before me for determination is the Notice of Motion application dated 30th July 2024 brought under Orders 45, 51 Rule 1 of the Civil Procedure Rules and Sections 3A and 63(e) of the *Civil Procedure Act* in which the Ex Parte Applicant seeks the following orders:-

    a) Spent.

    b) That the Honourable Court be pleased to review the ruling issued on 2nd July 2024.

    c) That the costs of the application be in the cause.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Francis Nyaga sworn on even date.

The Ex-parte Applicant's Case

3. The deponent averred that the ruling delivered on 2nd July 2024 contains an error apparent on the face of the record as the court failed to consider that the register of the suit parcels was originally in the name of the Ex-Parte Applicant.

4. He further averred that the Court failed to consider the existence of ELC Case No. E204 of 2020 filed by HFC Limited against 12 Defendants in which the Ex parte Applicant was sued as the 5th

Defendant. That vide a ruling delivered on 26th May 2022, the suit was dismissed against the 2nd-12th Defendants. That subsequently, the Plaintiff (HFC Limited) appealed against the said ruling in Civil Appeal (Application) No. E409 of 2022 and the decision was stayed by the Court of Appeal on 17th February 2023. He contended that there is a high likely hood that the suit properties will be sold if the court does not intervene to review its orders of 2nd July 2024. In conclusion, he urged the court to allow the application as prayed.

5. Though duly served, the Respondents did not file any response to the application.

6. The application was canvassed by way of written submissions.

The Ex Parte Applicant's Submissions

7. The Ex parte Applicant filed its submissions dated 19th February 2025.

8. On its behalf, Counsel reiterated the contents of the affidavit in support of the application. Counsel submitted that the court erred in holding that gazette Notice No.11201 dated 25th August 2013 was for reconstruction of lost/destroyed register as the Applicant was the registered owner of the suit parcels.

9. Counsel further submitted that the court failed to consider that the Applicant was not issued with the Notice contemplated under Section 33(5) of the *Land Registration Act* which requires that it be heard before the Respondents issued Gazette Notice No.11201 dated 25th August 2013 reconstructing its titles. Counsel contended that the Respondents failed to follow the procedure laid down under Sections 9,10 and 11 of the Fair Administration Act thus their decision was tainted with malice and illegalities. To buttress his submissions, Counsel relied on the case of Kobe v Land *Registrar Kilifi (Miscellaneous Application 17 of 2022*) [2022] KEELC 15394 (KLR) (19 December 2022) (Ruling).

Analysis And Determination

10. Having considered the application and the supporting affidavit thereof, the only issue for determination is whether the ruling delivered on 2nd July 2024 should be reviewed.

11. The law that governs applications for review is set out in Section 80 of the *Civil Procedure Act* and in Order 45 Rule 1 of the Civil Procedure Rules.

12. Section 80 of the *Civil Procedure Act* provides;

> " 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."

13. Order 45 of the Civil Procedure Rules, provides that:

> " (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."

14. The provisions of Order 45 were restated by the Court of Appeal in the case of Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited [2014] eKLR where the Court held that:-

> " In the High Court both the *Civil Procedure Act* in Section 80 and the Civil Procedure Rules in Order 45 Rule 1 confer on the court power to review. Rule 1 of order 45 shows the circumstances in which such review would be considered ranging from discovery of new and important matter or mistake or error apparent on the face of the record or any other sufficient reason but section 80 gives the High court greater amplitude for review."

15. Similarly, in Republic v Public Procurement Administrative Review Board & 2 Others [2018] eKLR the court held that: -

> " Section 80 gives the power of review and Order 45 sets out the rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review."

16. The application herein is premised on the grounds that the impugned ruling has an error apparent on the face of the record.

17. The Applicant must establish that there is an error apparent on the face of the record.

18. In the case of Nyamogo & Nyamogo v Kogo [2001] EA 170 the court held that;

> " An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning where there may be conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong is certainly no ground for review though it may be one for appeal."

19. Similarly, in the case of National Bank of Kenya Ltd v Ndugu Njau Civil Appeal No 211 of 1996 the Court of Appeal held that:-

> " A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established."

20. Further in Timber Manufacturers and Dealers v Nairobi Golf Hotels (K) HCCC No. 5220 of 1992, Emukule J held that:-

> " For it to be said that there is an error apparent on the face of the record, it must be obvious and self- evident and does not require an elaborate argument to be established."

21. From the foregoing, it is clear that the error ought to be so glaring that there can be no debate about it. The Ex Parte Applicant argued that the court could have arrived at a different conclusion if it had considered other grounds, including that the Respondents were in error while issuing the gazette notice that is subject of the suit.

22. Vide a ruling delivered on 2nd July 2024, this court dismissed the Ex parte Applicant's substantive Notice of Motion dated 8th May 2024 seeking judicial review orders of prohibition, mandamus and certiorari to quash the Respondents' decision contained in Gazette Notice No. 11201 dated 25th August 2023 revoking its title to parcels of land known as IR.204894 and I.R 204895.

23. The Ex parte Applicant contended that the court failed to consider that it was its only recourse following the ruling of the court in ELC E204 of 2020 and in Civil Appeal (Application) No. E409 of 2022.

24. Contrary to the Ex Parte Applicant's assertion that the suit parcels risk being sold if this court does not review its decision of 2nd July 2024 and grant the orders sought, there is an injunction issued by the Court of Appeal in Civil Appeal (Application) No.E409 of 2022 vide its ruling of 17th February 2023 restraining the Respondents (including the Ex parte Applicant) from dealing in any manner with Land Reference Number 7785/97 (Original Number 7785/10/92) and the purported subdivided plots thereto to wit: Certificate of Title IR No.204894,Land Reference No. 7785/1489 (Original Number 7785/99/2) and certificate of title IR No.204895,Land Reference No.7785/1490(Original number 7785/99/3) pending hearing and determination of the said appeal. I.R 204894 and I.R 204895 are the parcels in contention herein hence the said argument does not hold water.

25. In Supreme Court No. 3 of 2014; Robert Tom Martins Kibisu v Republic [2018] eKLR, the court held;

> " An application cannot be said to be for correction of errors when it is anchored and is replicate with allegation of discontentment with the Court's finding and/or appreciation of legal principles and their interpretation thereof. Such dissatisfaction is normally a ground for appeal."

26. The Applicant has not shown that there is an error apparent on the face of the record.

27. In the end, I find that the Applicant has not met the threshold for the grant of review orders sought.

28. The upshot of the foregoing is that the application dated 2nd July 2024 is devoid of merit and the same is hereby dismissed with no orders as to costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 4TH DAY OF APRIL, 2025.

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T. MURIGI

JUDGE

In the presence of:

Absence of the parties

Hilda – Court assistant