



**Kamau v Kibuika & another (Environment & Land Case
002 of 2021) [2022] KEELC 3843 (KLR) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3843 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 002 OF 2021**

LA OMOLLO, J

JULY 26, 2022

BETWEEN

PETER KARURI KAMAU PLAINTIFF

AND

LUCY MUTHONI KIBUIKA 1ST DEFENDANT

THE DISTRICT LAND REGISTRAR NAKURU 2ND DEFENDANT

RULING

1. I have perused the notice of motion application dated July 21, 2022 and the affidavit in support.
2. The application seeks orders of review to include the name and number of the suit property ie. Mau Narok/Siapei Block 4/122 (Mukungugu) in the final decree of the court.
3. The application is expressed to be brought under section 80 and 3A of the *Civil Procedure Act* and order 51 rule 1 of the *Civil Procedure Rules* and any other enabling provisions of the law.
4. I note from the court record that the 1st defendant did not participate in the proceedings despite service. This fact is in the grounds on the face of the application and also deposed by the plaintiff in the affidavit in support of the application. For this reason, I find no need to order service of this application on the 1st defendant.
5. I also note that the orders sought are in no way prejudicial to either the 1st defendant or the 2nd defendant.
6. The substantive law pertaining to review is in section 80 of the *Civil Procedure Act* cap 21 laws of Kenya and it 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;
- (b) By a decree or order from which no appeal is allowed by this *Act*.

May apply for a review of judgement so the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

7. Order 45 rule 1 and 2 sets out the conditions to be met for a court to review its decision. This section provides as follows:

(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 order made, or an 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 an unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pending 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 review.

8. The basis for an application for review is:

- (a) The discovery of new and important matters or evidence which after due diligence, was not within the applicants knowledge or could not be produced by him/her at the time when the decree was passed on the order made.
- (b) Some mistake or error apparent on the face of the record.
- (c) For any other sufficient reason.

9. The applicant contends that the reason for review is to correct the error and/or omission on the face of the record so as to include the details of the suit property *ie* Mau Narok/Siapei Block 4/122 (Mukungugu).

10. In *Grace Akinyi v Gladys Kemunto Obiri and another* [2016] eKLR the learned judge cited with approval the decision in *National Bank of Kenya v Ndungu Njau* Civil Appeal No 211 of 1996, wherein 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. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceeded on an incorrect expansion of the law”

11. On the question of costs, the general rule is that costs shall follow the event. This is in accordance with the provisions of section 27 of the [Civil Procedure Act](#) (cap 21) Laws of Kenya.

Disposition.

12. The upshot of the foregoing is that the application dated July 21, 2022 is allowed in the following terms;
 - (a) The judgement delivered by this honourable court on May 26, 2022 and the decree issued on June 8, 2022 is hereby reviewed to include the name and number of the suit property ie Mau Narok/Siapei Block 4/122 (Mukungugu).
 - (b) The applicant shall meet the costs of the application.

13. It is so ordered.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON 26TH DAY OF JULY, 2022.

LA OMOLLO, JUDGE

July 26, 2022

