



**Chepkwony v Bett & another (Environment & Land Case  
39 of 2019) [2022] KEELC 2659 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 39 OF 2019**

**MC OUNDO, J**

**JULY 21, 2022**

**BETWEEN**

**JOEL KIPROTICH CHEPKWONY ..... APPLICANT**

**AND**

**VINCENT BETT ..... 1<sup>ST</sup> RESPONDENT**

**RUTH LANGAT ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. After striking out the Plaintiff's suit via a ruling delivered on the 18<sup>th</sup> day of November 2021 for reason that the Defendants were not clothed with the requisite locus standi to be sued, the Plaintiff has now filed an application dated the 14<sup>th</sup> February 2022 pursuant to a myriad of the provisions of the law being Order 45 Rule 1 & 2 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act*, Section 45, 5.3(1) (sic) and 79 of the *Law of Succession*, Article 21(1), 22(1)(3)(a-e)(4), 23(1)(3), 24(1), 39(1) (3), 159(d), 162(2) of *the Constitution* and Section 149 & 150 of the *Land Act*, seeking for the review and/or setting set aside of the said Ruling as well as for stay of execution of the same.
2. The Application was supported by the grounds therein as well as through the Affidavit (sic) of Joel Kiprotich Chepkwony the Applicant herein, sworn on the 14<sup>th</sup> February 2022 to the effect that the suit subject matter was a public road of access which was not part of land parcel No. Kericho/Koiwa/686 that formed part of the estate of the deceased person to require a Succession process. That the striking out of the suit rendered the Plaintiff condemned unheard.
3. The Application was opposed by both the Respondents' Grounds of Opposition dated the 1<sup>st</sup> March 2022 and Replying Affidavit of 25<sup>th</sup> March 2022 to wit that the subject matter was part of the estate of the deceased Kipilongei Arap Langat wherein no Letters of Administration had been procured. That had the subject suit been a public road, the Plaintiff ought to have sued the County of Bomet or the



Government of Kenya who were trustees and/or custodians of public interests including road reserves, and not the deceased's beneficiaries.

4. The Application was disposed of by way of written submissions.

#### **Applicant's written Submissions.**

5. Plaintiff argued his application based on two issues for determination to wit whether the subject matter of the suit being a public road of access was part of the deceased's land parcel No. Kericho/Koiwa/886 (sic) requiring the Respondent to take up Letters of Administration to obtain the locus standi to sue or defend.
6. Secondly, whether the road of access passing between land parcels No. Kericho/Koiwa/686, 787 and 788 and finally ending at No. Kericho/Koiwa/679 was part of the land parcel No. Kericho/Koiwa/686.
7. The Plaintiff's submission was that the road of access shown in the map sheet registration No 7 annexed as JKC 2 clearly defined the borders between No. Kericho/Koiwa/686 on one side and No. Kericho/Koiwa/787 and 788 on the other side.
8. That the deceased, Kipilonjei Arap Langat was the registered proprietor of parcel of land No. Kericho/Koiwa/686 which had defined boundaries and boarded the road in dispute. That there was no ownership over an access road and any person encroaching on it by blocking it could be personally sued in his/her capacity by an interested person.
9. That the public road of access was not the estate of the deceased person to require the succession process. That the Bomet Land Registrar vide a letter dated 26<sup>th</sup> November 2014 annexed as JKC3 had confirmed that the road in question was a public road and therefore the Defendants had no rights to block it. That the Defendants had misled the court by claiming that they had been sued for a road of access to be opened through parcel of land No. Kericho/Koiwa/686. There was therefore insufficient material and/or information supplied to the court before it made its ruling.
10. That the Defendants had the Locus standi to be sued or defend the suit as the claim was not touching on parcel No. Kericho/Koiwa/686 which is registered to the deceased Kipilonjei Arap Langat and therefore they were personally liable to be compelled to open the road.
11. That the application had met the threshold for reviewing the ruling made on 18<sup>th</sup> November 2021 by setting it aside and dismissing the Preliminary Objection dated 25<sup>th</sup> July 2021 so that the suit could proceed for hearing.

#### **Defendants' written submissions.**

12. The Defendants, in opposition of the Plaintiff's application for review and/or setting aside of the court's ruling of 18<sup>th</sup> November 2021, framed their issues for determination as follows;
  - i. Is the path or access road registered as required in law or is it still lying in parcel of land No. Kericho/Koiwa/686.
  - ii. Can the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be sued and orders issued against them in a parcel of land that is still registered in the name of a deceased person? If the orders sought are granted, how can the same be enforced?



- iii. Has the Plaintiff come before the court with new discoveries, that is, the Defendants can be sued on their own individual capacities this being a public interest matter? If yes, can their prayers for review and/or setting aside stand the legal test?
  - iv. Is this matter an Environment and Land case or more of a succession matter/
13. The Defendants submitted that the ruling by the court on the locus standi was a simple statement that the court had taken into in regard to the requirements of the law and had to dispense justice accordingly. That any reason to set aside the court’s ruling must be based on good grounds or reasons advanced and not on a whim or caprice. That the Defendants had demonstrated that they were mere beneficiaries and dependents of the estate of the deceased Kipilongei Arap Langat and therefore had no capacity to be sued to defend the estate without having the capacity conferred upon them through the Grant of Letters of Administration.
14. That it was not the public who were in need of the access road but rather the Plaintiff alone and therefore the suit was filed based on malice and in bad faith. That the Plaintiff had no right to demand for a foot path on the deceased’s land. That the Plaintiff’s continuous reference to the foot path as a public road of access fell short of the definition of a public road as defined under Section 12(3) of the [Public Roads and Roads of Access Act](#).
15. That public interest litigation could not override the succession law and close its eyes to the requirement thereto and further that a cause of action against the beneficiaries and dependents of a deceased proprietor to land could not be sustained without the requisite Letters of Administration.

### **Determination**

16. I have considered the application for and the response against the review and setting aside of the court’s ruling of 18<sup>th</sup> November 2021.
17. Order 45 Rule 1 of the Civil Procedure Rules 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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”
18. Section 80 of the [Civil Procedure Act](#) 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; or
  - (b) by a decree or order from which no appeal is allowed by this Act, May apply for a review of judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.



19. From the above provisions, it is clear that whereas Section 80 of the *Civil Procedure Act* gives the court the power to review its orders, Order 45 Rule 1 of the Civil Procedure Rules sets out the rules which restrict the grounds upon which an application for review may be made. These grounds include;
- i. discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the decree was passed or the order made or;
  - ii. on account of some mistake or error apparent on the face of the record, or
  - iii. for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un-reasonable delay.
20. The main grounds for Review are therefore; discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.
21. In this case, the reason given by the Applicant in his Application seeking to have the Ruling and Order of the 18<sup>th</sup> November 2021 reviewed and set aside was that the matter concerning the suit was a public road of access. That the same was not part of land parcel No. Kericho/Koiwa/686 which formed the estate of the deceased person and therefore the Defendants needed not to have acquired Letters of Administration to defend the suit. That the striking out of the suit had condemned the Plaintiff unheard.
22. Indeed in the case of *National Bank of Kenya Limited v Ndungu Njau* (1997) eKLR, the Court of Appeal Court had 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 a sufficient ground for review that another Judge could have taken a different view of the matter”.
23. The court, on its part is bound by the pleadings of the parties. The duty of the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings. The court would be out of character were it to pronounce any claim or defence not made by the parties as that would be plunging into the realm of speculation and might aggrieve the parties or, at any rate, one of them. A decision given on a claim or defence not pleaded amounts to a determination made without hearing the parties and leads to denial of justice.
24. This proposition was expressed as follows by the former Court of Appeal for *Eastern Africa in Gandy vs Caspar Air Charters Limited* [1956] 23 EACA, 139:
- “The object of pleadings is, of course, to secure that both parties shall know the points in issue between them; so that each may have full information of the case he has to meet and prepare his evidence to support his own case or to meet that of his opponent. As a rule relief not founded on the pleadings will not be given”
25. In the present scenario, and based on the pleadings therein, the Plaintiff’s suit had been struck out for reason that the Defendants had no locus standi to be sued the subject parcel of land parcel No. Kericho/Koiwa/686 having formed part of the estate of the deceased Kipilonjei Arap Langat wherein no Letters of Administration had been taken out. The Plaintiff has now filed an application for review



of the Court’s ruling on the basis of what he purported as new evidence to the effect that the suit was a “public interest litigation” brought by him as an interested party and the only person who was injured by the closure of the road by the Defendants.

26. In *Okiya Omtatah Okiti vs. Communications Authority of Kenya & 14 Others* [2015] eKLR, Lenaola, J (as he then was) expressed himself as hereunder:

“In my view, this Court has a duty to protect the noble motive of public interest litigation from those who file claims out of mischief and less than genuine interest in the guise of protecting a public interest. The filing of false and frivolous public interest litigation which risk diverting the Court’s attention from genuine cases will not be entertained.”

27. Similarly, in the case of in *Truth Justice and Reconciliation Commission vs. Chief Justice of the Republic of Kenya & Another* [2012] KLR, Warsame, J (as he then was) held that:

“Though as Courts we spare no efforts in fostering and developing liberal and broadened litigation, yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to matters which are dear to them must be addressed, the meddlesome interlopers having absolutely no grievances but who file claims for personal gain or as a proxy of others or for extraneous motivation break the queue by wearing a mask of public interest litigation and get into the Court corridors filing vexatious and frivolous cases. This criminally wasted the valuable time of the Court and as a result of which genuine litigants standing outside the Court in a queue that never moves thereby creating and fomenting public anger, resentment and frustration towards the courts resulting in loss of faith in the administration of justice.”

28. I am in agreement with both the holdings of the distinguished Judges (as they were) herein above stated and having looked at the reason advanced by the Plaintiff/Applicant for seeking that this court reviews its Ruling of 11<sup>th</sup> November 2021, the same does not constitute the discovery of new evidence which was not within his knowledge or could not be produced by him at the time of hearing of the suit, in fact what the Plaintiff is now doing is trying to have a second bite of the cherry by introducing a claim on public interest for personal gain which acts shall not be entertained by this court.

29. I find that the application dated the 14<sup>th</sup> February 2022 does not meet the threshold set out under Order 45 Rule 1 of the Civil Procedure Rules and thus is not a proper case for the court to exercise its discretion to review its ruling in favour of the Plaintiff/Applicant. Accordingly, I proceed to dismiss the said application with costs.

**DATED AND DELIVERED VIA TEAMS MICROSOFT AT KERICHO THIS 21ST DAY OF JULY 2022.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

