



REPUBLIC OF KENYA



**Tonje v Tonje & another (Environment & Land Case E001 of 2024)
[2025] KEELC 142 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 142 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT & LAND CASE E001 OF 2024**

**L WAITHAKA, J
JANUARY 27, 2025**

BETWEEN

JOHN BARTINGA TONJE PLAINTIFF

AND

PERIS KOBILO TONJE 1ST DEFENDANT

DAUDI C TONJE 2ND DEFENDANT

RULING

1. John Bartinga Tonge, (hereinafter referred to as the applicant), instituted this suit seeking Judgment against Daudi C. Tonje and Peris Kobilo Tonje (hereinafter jointly referred to as the respondents) for a declaration that the parcel of land known as Baringo/Sabatia/103/101 (hereinafter referred to as the suit property), is the property of Teziah Talai Tonje (deceased); An order of permanent injunction to restrain the respondents and any other beneficiaries from executing the certificate of confirmation of the grant issued by the court vide Nakuru High Court Succession Cause No.177 of 2005 regarding the suit property; Costs of the suit.
2. As can be discerned from the pleadings filed by the applicant, the suit is premised on the ground that the suit property was wrongly and/or erroneously included and administered as part of the estate of his late father Chepkonga Tonje vide the said High Court Succession Cause.
3. The applicant acknowledges that he participated in the impugned succession proceedings by objecting to the inclusion of the suit property as part of the estate of his father which was being administered by the respondents. He avers that he lost the objection and the grant issued in those succession proceedings was confirmed in favour of the respondents and other beneficiaries of the estate of his father, the late Chepkonga Tonje.



4. Apprehensive that the respondents and the other beneficiaries of his father comprised in the suit property may execute the confirmed grant, which execution may result in his eviction from the suit property, the applicant instituted this suit seeking the reliefs listed herein above.
5. Maintaining that the suit property was wrongfully included in the confirmed grant issued to the respondents in respect of his father's estate and arguing that it is this court which has constitutional and legal mandate to deal with issues concerning ownership of land, the applicant filed the notice of motion dated 1st July 2024 through which he inter alia seeks an order of review of the orders issued by the Succession Court on the grounds listed herein above.
6. The applicant also seeks to strike out the name of Zipporah Boiwo Tonje from his pleadings (application) on the ground that the name was erroneously included in the application. The plaintiff/ applicant further seeks to change the mode of his plaint from being under order 3 and order 11 of the *Civil Procedure Act*.
7. In reply and opposition to the application, the respondents filed grounds of opposition dated 18th September 2024. Terming the application defective in form for the reason that it is not supported by an affidavit distilling the facts on which it is premised and contending that the orders sought, particularly the order of review, cannot issue because it was issued by a different court, the respondents have contended that prayers (a) and (b) of the application cannot be granted as it is not clear what the applicant wants in respect thereof. Terming the application a total mess and a dissaray, the respondents urge the court to find it devoid of form and substance and dismiss it.
8. Pursuant to directions issued on 19th September 2024, the application was disposed off by way of written submissions.
9. In his submissions filed on 9th October 2024, the applicant reiterates the grounds on the face of his application, that is to say, that the name of Zipporah Boiwo Tonje was added in his previous application in error (application not identified) and that the suit property was included in the Succession Cause wrongly and erroneously. Maintaining that this court has jurisdiction to hear and determine his application for review, the applicant urges this court to grant him the orders sought.
10. The respondents did not file submissions and if they did, the submissions were not placed in the court file.

Analysis and Determination

11. I have carefully read and considered the issues raised in the application and the response thereto.
12. Concerning the prayer for striking the name of Zipporah Boiwo Tonje from the applicant's application on the ground that it was erroneously added in the application, the order cannot issue for the reason that the applicant has not identified the application in which the name was erroneously added or included. The same position obtains for the prayer for change of the plaint from having been brought under order 3 and 11 of the *Civil Procedure Act*. The order cannot issue on the ground that the court is unable to decipher or understand what the applicant is seeking through that prayer.
13. With regard to the prayer for review of the order issued by the Succession court listing the suit property as part of the estate of Chepkonga deceased, this court is unable to grant such an order for the reason that it was issued by a court of concurrent jurisdiction in exercise of its statutory mandate hence not a matter that this court has jurisdiction to deal with by way of review. If the applicant had good grounds for review of the decision of the succession court, he ought to have applied for review of the decision before the Succession Court. Alternatively, if he was dissatisfied with the decision of the Succession



Court on its merits, he ought to have appealed to the Court of Appeal. This court being a court of concurrent jurisdiction with the Succession Court which handled the succession cause hereto (High Court) cannot lawfully be invited to re-examine a decision of a court of concurrent jurisdiction with a view of setting aside or revoking its decision as the applicant is asking this court to do.

14. Besides, there was inordinate and unexplained delay in bringing the application for review. Under order 45 rule 1 of the *Civil Procedure Rules*, an application for review ought to be made to the court which made the order sought to be reviewed. The application has to be made without unreasonably delay (timeously). In that regard see the said provision of the law 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”.

15. The orders sought to be reviewed through the instant application were issued many years ago and to a court other than the court which made the order sought to be reviewed. The applicant has not offered any explanation for the delay in bringing the application for review.
16. The upshot of the foregoing is that the application dated 1st July 2024 is found to be lacking in merits and is dismissed with costs to the respondents.
17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KABARNET THIS 27TH DAY OF JANUARY 2025.

L. N. WAITHAKA

JUDGE

Ruling read virtually in the presence of:

John Tonje – Plaintiff/Applicant

Ms. Chepngetich holding brief for Mr. Kisila for the defendant/respondent

Court Asst.: Christine

