



**Gambo v Sadi (Environment & Land Case 58 of 2015)
[2022] KEELC 4868 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4868 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 58 OF 2015
JO OLOLA, J
SEPTEMBER 22, 2022**

BETWEEN

CONSTANCE MOSE GAMBO PLAINTIFF

AND

ALEX SADI DEFENDANT

RULING

1. By the Notice of Motion dated and filed herein on September 21, 2020, Alex Sadi (the Defendant) prays for orders that the orders issued herein on February 6, 2020 be reviewed, varied, discharged and/or set aside. The application which is supported by an Affidavit sworn by the Defendant is premised on the grounds that:
 - (a) This Honourable Court delivered a Ruling on February 6, 2020 dismissing the Defendant's application dated November 8, 2018;
 - (b) That the said decision was arrived at after this Honourable Court had failed to have material facts related to the nature of the Plaintiff's claim as well as the Defendant's line of defence in these proceedings;
 - (c) That the Defendant was never a trespasser to the said land but a bonafide purchaser in law and is duty bound to be protected by this Court for he has followed the due process in purchase of the same;
 - (d) That same material facts and explanation therefore was lacking so as to allow the Court make an informed decision which would balance the matters and given an avenue for a fair trial;
 - (e) That based on the evidence attached herein it is in the interest of justice that the said Ruling be reviewed, set aside and the application dated 8th November, 2018 be set down for hearing



and the Defendant be granted leave to file a further affidavit as well as the annexed copy of the Defence herein;

- (f) Allowing this application shall not prejudice the Plaintiff in any way;
 - (g) If the application is disallowed, the Defendant will suffer great loss and damage for land that he has lawfully purchased and paid the due purchase price to the Plaintiff's father;
 - (h) That the failures in filing a Defence were occasioned by misunderstandings between the Defendant and his Advocates and the same should not be visited upon the Defendant for all purposes;
 - (i) That the Defendant has a good Defence and/or response to the Plaintiff's claim and it is only just and fair that the orders sought herein be granted.
2. Constance Mose Gambo (the Plaintiff) is opposed to the application. In a brief Replying Affidavit sworn on June 9, 2021, the Plaintiff avers at the relevant Paragraphs 3 to 5 thereof as follows:
- “3. That the matters raised in the Application as to ownership of the land in question were dealt with in finality in the Succession Case No. 13 of 2018 and in the Judgment of this Court dated July 19, 2018;
 - 4. That the issue of stay was dealt with in finality by this Court on February 6, 2020;
 - 5. That I am advised by my Advocates that this Court is now *functus officio* and cannot discuss matters it has already addressed itself on in finality.”
3. I have carefully perused and considered the application and the response thereto. I have equally perused and considered the rival submissions and authorities as placed before me by the two disputants.
4. By this application, the Defendants urges the Court to be pleased to review, vary and/or set aside the orders of this Court as issued on February 6, 2020. It is his case that the decision of February 6, 2020 was arrived at after this Court failed to have material facts related to the nature of the Plaintiff's claim as well as the Defendant's line of defence in these proceedings. The Defendant asserts that his failure to file a defence and participate in these proceedings were occasioned by misunderstanding between himself and his previous Advocates on record and that those mistakes ought not to be visited upon himself.
5. This is the fourth application lodged in this matter by the Defendant ever since Judgment was delivered against himself on July 19, 2018. The orders that this Court is being asked to review and/or set aside arose from an application dated November 8, 2018 also instituted by the Defendant. By that application, the Defendant had sought a temporary stay of execution of the Judgment and that ultimately the Judgment and all consequential orders be set aside and/or discharged.
6. The grounds for the said application were more or less the same as those raised herein. It was the Defendant's case that he had been condemned unheard as the matter had proceeded without his knowledge and/or participation. Like now, the Defendant condemned his former Advocates for the prevailing situation stating that the said Advocates had deliberately failed to file a defence on his behalf and to inform him of the dates when the matter came up for hearing.
7. Messrs O. M. Robinson Advocates who were on record for the Defendants when Judgment was entered against the Defendant however filed a Replying Affidavit disputing the Defendant's claim.



8. In the Ruling delivered on February 6, 2020, this Court found as a matter of fact that the Defendant and his previous Counsel disagreed over payment of fees. It was however clear from a perusal of the said Counsel's Replying Affidavit as well as a Supplementary Affidavit filed by the Defendant on February 12, 2019 that the Defendant was kept aware of what was going on in his case.
9. Taking all the circumstances of the case into account, this Court arrived at the conclusion that the Defendant had deliberately sought by evasion or otherwise to obstruct or delay the course of justice and dismissed his application dated November 8, 2018 by the Ruling issued on February 6, 2020.
10. By this new application the Defendant now wants the Court to review the orders of February 6, 2020 ostensibly on the account that the Court at the time of delivering the Ruling did not have all the material facts related to the nature of the Plaintiff's claim and the Defendant's line of defence. No reason has been given as to the nature of those material facts and how or why the Court failed to take the same into consideration.
11. I am not persuaded to travel that same path with the Defendant. All the issues being raised in this application have been deliberated upon by this Court not only in its Judgment delivered on July 19, 2018 but also in the impugned Ruling of February 6, 2020. That being the case, this Court is now *functus officio* and cannot be expected to re-deliberate on the same issues.
12. As the Supreme Court stated in *Raila Odinga -vs- IEBC and 3 others* Petition No. 5 of 2013 (2013) eKLR:

“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter ... The (principle) is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”
13. The Defendant has come to Court with the very same arguments that he had raised in the application dated December 18, 2018 which the Court had dismissed. The only difference is that he has now annexed a draft Statement of Defence. No explanation has been given why the same was omitted from the previous application.
14. In the circumstances I am persuaded that this present application has been filed in abuse of the Court process. It is misconceived and without merit. It is dismissed with costs to the Plaintiff.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 22ND SEPTEMBER, 2022.

In the presence of:

Ms Asli for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

Court assistant - Kendi

J. O. OLOLA

JUDGE

