



Sarah v Multiple Hauliers (E.A.) Limited & another (Environment & Land Case 12 of 2021) [2022] KEELC 13484 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13484 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 12 OF 2021
EK WABWOTO, J
OCTOBER 13, 2022**

BETWEEN

HALIMA HAJI SARAH PLAINTIFF

AND

MULTIPLE HAULIERS (E.A.) LIMITED 1ST DEFENDANT

AJMAL COMPANY LIMITED 2ND DEFENDANT

RULING

1. This ruling is in respect to the 2nd Defendant's application dated 29th August 2022 to set review, set aside, vary and discharge the orders of this court issued on 28th July 2022.
2. The motion is supported by an affidavit sworn by Bashir Abdi Mohamed on 29th August 2022 reiterating the grounds in support of the application.
3. The application is opposed by the Plaintiff. The Plaintiff in opposing the Application filed grounds of opposition and replying affidavit sworn by the Plaintiff on 16th September 2022.
4. Pursuant to the directions that were given by this court on 31st August 2022, this court directed both the application to be canvassed by way of written submissions upon which both parties complied. The 2nd Defendant filed its submissions dated 1st September 2022 while the Plaintiff filed her submissions dated 16th September 2022.
5. In its written submissions dated 1st September 2022, Counsel for the 2nd Defendant submitted that at the time of the ruling of 28th July 2022, the Plaintiff was not in occupation of the suit property and the 2nd Defendant had already commenced the construction of the same and had entered into agreements with contractors and engineers and that the 2nd Defendant stands to suffer greatly should the orders issued on 28th July 2022 remain in place.



6. Counsel for the Plaintiff filed his written submissions dated 1st September 2022 through Khaminwa and Khaminwa Advocates argued that the application was an abuse of the court process as the order sought can only be considered at the main hearing of the suit. The Plaintiff urged the court to dismiss the said Application.
7. I have considered the Application, the rival affidavits and the submissions filed by Counsel for the parties in respect to the same. The issue for determination is whether this Court should proceed to set aside, vary, review and discharge its orders issued on 28th July 2022.
8. In the ruling delivered on 28th July 2022, the court after considering the Plaintiff's application dated 26th April 2022 issued the following orders;-
 - i. An order be and is hereby issued directing the 2nd Defendant and its agents to return the Plaintiffs distrainable and non -distrainable goods back to the Plaintiff.
 - ii. The 2nd Defendant is stopped from making further developments on the suit property pending the hearing and determination of this suit.
 - iii. The 2nd Defendant to pay the costs of this application.
9. The jurisdiction of the court to set aside an or vary an order of injunction is outlined under Order 40 Rule 7 [Civil Procedure Rules](#), 2010 which provides as follows:

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”
10. Order 45 Rule 1 of the Civil Procedure Rules is couched in similar terms and goes on to provide the procedure and the conditions that an Applicant must satisfy as follows: -

“45

 - (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.”
11. In this regard, for a Court to review its own orders, it must be demonstrated that there is discovery of new and important matter or evidence. It must also be shown that the new evidence was not within the knowledge of the party seeking review or could not be produced at the time the orders were made.



Such party must also satisfy the Court that this was the case even after exercise of due diligence. A Court will also review its orders if it is demonstrated that there is some mistake or error apparent on the face of the record, or for any other sufficient reason. The error must be evident on the face of the record and should not require much labour in explanation. An Application for review must also be made without unreasonable delay.

12. In the case of *Benjob Amalgamated Ltd vs Kenya Commercial Bank Ltd* [2014] eKLR it was held that review orders are intended to correct mistakes and human error and should be issued in exceptional circumstances.
13. In the instant case, the orders were issued on 28th July 2022 basing on the material facts that were placed before court at that time. The orders issued were issued based on facts placed before this court to the effect that the 2nd Defendant's action in evicting the Plaintiff and demolishing the structures on the suit property was unwarranted when the said suit was still pending for determination. It is evident that this court was satisfied that the material placed before it was sufficient for granting of the said orders.
14. In view of the above and having considered the facts in support of the application and in opposition, it is the finding of this court that the 2nd Defendant has not met the threshold to warrant setting aside and or variation of the orders issued on 28th July 2022 in respect to suit property. I would not wish to reiterate in extenso my findings made in the ruling delivered on 28th July 2022.
15. Accordingly, I find the application dated 29th August 2022 unmerited and the same is dismissed with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER 2022

E.K. WABWOTO

JUDGE

In the presence of: -

Mr. Munyambu h/b for Dr. Khaminwa for the Plaintiff.

Mr. Mwihuri for the 1st Defendant.

Mr. Wafula for the 2nd Defendant.

Court Assistant: - Caroline Nafuna.

E.K. WABWOTO

JUDGE

