



Murathe & another v Muriungi (Sued as the administrator of the Estate of William Peter Muriungi (Deceased)) (Environment & Land Case 39 (OS) of 2018) [2022] KEELC 15117 (KLR) (30 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15117 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 39 (OS) OF 2018
CK NZILI, J
NOVEMBER 30, 2022**

BETWEEN

HENRY KARIORA MURATHA 1ST RESPONDENT

JULIUS BUNDI MARETE 2ND RESPONDENT

AND

FLORENCE GACHERI MURIUNGI APPELLANT

SUED AS THE ADMINISTRATOR OF THE ESTATE OF WILLIAM PETER MURIUNGI (DECEASED)

RULING

1. What is before the court is the application dated April 27, 2022 in which the defendant/applicant seeks for the review or setting aside of the orders made directing him to deposit the original titles for LR No's Nyaki/Kithoka/2273 and 2274 with the Deputy Registrar of the court within 14 days and instead to deposit the green cards thereof.
2. The reasons are contained on the face of the application and the supporting affidavit of Florence Gacheri Murungi sworn on April 27, 2022 that: the original title deeds are lost; efforts to trace them have been fruitless; the application was made timeously; there will be no prejudice to the respondent and it was in the interest of justice to grant the orders sought.
3. The motion is opposed by the respondents through a replying affidavit sworn by Julius Bundi Rimberu on September 22, 2022.
4. The grounds are that; the conditional orders granted by the court lapsed after 14 days of non-compliance; the decree has since been executed; the application is overtaken by events; no sufficient grounds to warrant for review have been propounded and the application is an afterthought.



5. Order 45 of the *Civil Procedure Rules* as read together with Section 80 of the *Civil Procedure Act* provides that a court can review its decree or orders based on new and important material which despite the exercise of due diligence, was not within the reach of the applicant; if there is error apparent on the face of the record and lastly for any other sufficient reason.
6. While expounding on the principles applicable, the Court of Appeal in *National Bank of Kenya Ltd vs Ndungu Njau* (1997) eKLR, held that a review may be granted whenever the court considers it necessary to correct an apparent error or omission on the part of the court which is self-evident.
7. In *Republic vs Advocates Disciplinary Tribunal Exparte Appollo Mboya* (2019) eKLR, the court held that review was impermissible without a glaring omission, evident mistake or similar ominous error evident per se from the record and which does not entail detailed examination, scrutiny and or elucidation either of facts or the legal position.
8. Applying the above reasoning and principles, the applicant does not point out an error, omission or mistake on the part of the court. There is no new or fresh evidence brought before court which was not within her knowledge as at the time the order was made. The applicant does not state when she last saw or possessed the title deeds. The applicant has not offered to submit any alternative security as condition precedent before this court. At the time the suit proceeded for hearing and during the application for stay there was no mention of the alleged missing title deeds.
9. All this information was within knowledge of the applicant and cannot possibly be termed as new and important evidence. Similarly, for the applicant to say that she intends to substitute the originals title deeds with the green card is to say the least most inappropriate since that cannot be equated to sufficient or equivalent security.
10. The respondent has averred that the orders sought have been overtaken by events as execution was affected. The applicant has not denied those facts.
11. In the circumstances I find no merits in the application. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 30TH DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu

Otieno for Wafula for Defendant/Applicant

HON. C.K. NZILI

ELC JUDGE

