



**Maguta v Mukima (Environment & Land Case E027 of 2022)
[2025] KEELC 4090 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4090 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E027 OF 2022**

FM NJOROGE, J

MAY 28, 2025

BETWEEN

KIMANI MBUGUA MAGUTA PLAINTIFF

AND

FRANCIS M'TAARU MUKIMA DEFENDANT

RULING

1. The Defendant moved the Court vide a notice of motion application dated 18/7/2024 seeking the following orders: -
 - 1 Spent;
 2. Spent;
 3. That upon granting prayer 2 above, this Honourable Court be further pleased to review its judgment issued on 22/5/2024, decree issued on 22/5/2024 and set aside, vary and/or vacate the said judgment together with all other consequential orders arising therefrom which declare the Plaintiff/Respondent as the lawful owner of L.R No. 93 Watamu and uphold the Defendant/Applicant as the owner of the said parcel of land;
 4. That costs of the application be in the cause.
2. The Application is supported by the grounds on its face as well as on the supporting affidavit of the Defendant Francis M'taarum Mukiana sworn on the 18/7/2024.
3. The Defendant stated that this suit proceeded to a full hearing after which judgment was entered in favour of the Plaintiff on 22/5/2024, warranting him to vacate the suit property within a period of 60 days or be forcibly evicted; that in its judgment, the court relied on the plaintiff's exhibits which included a certificate of lease transferred to the Plaintiff on 31/3/2016 vide entry no. 5; that the Plaintiff's explanation was that the title was initially issued to one Christopher Kimondo on



- 1/7/1979, who transferred to Charles Kabue Githaiga on 7/12/1989 and eventually to the Plaintiff on 31/3/2016. The Defendant averred that upon perusal of the court record, he discovered that the certificate of grant dated 31/5/2016 does not exist and all that is on the record is a certificate of grant number 15791, issued to the said Christopher on 1/7/1979.
4. The Defendant added that in the event that the Plaintiff is in possession of a grant in his favour, then he was in default of special condition no. 2 and 8 contained in all government leases, the present one included. According to the Defendant, by dint of the said condition 8, the Plaintiff was obligated to furnish the consent of the Commissioner of Lands to demonstrate that the Commissioner permitted Charles Kabue to transfer the suit property to him. To the Defendant, since the certificate of lease provided by the Plaintiff did not contain his name as the registered owner, it was not sufficient for the Court to rely on the certificate of official search as conclusive proof of ownership. To him, that was an error apparent on the face of the record.
 5. The Defendant further stated that his current advocate sought provision of relevant documents pertaining the suit property on 4/6/2024, together with the consent that effected the transfer of suit property; that the response from the land registry was that such documents did not exist. The Defendant averred that this was new evidence that was not within the reach of his previous advocates.
 6. The application was opposed by the Plaintiff through an affidavit sworn on 27/9/2024 and erroneously baptised 'supporting affidavit'. In that affidavit, the Plaintiff stated that the Application lacks merit, does not satisfy the tenets necessary for review and urged that it be dismissed with costs.
 7. The Application was canvassed by way of written submissions which I have keenly considered in this ruling.

Analysis And Determination

8. Having considered the application, affidavits, submissions and authorities cited, I find the following issues arising for determination: -
 - i. Whether the court should review its judgment delivered on 22/5/2024.
 - ii. Who shall bear the costs of this application?
9. Order 45, Rule 1(b) of the *Civil Procedure Rules* is clear that for the court to review its decision, certain requirements should be met. This section provides as follows:
 - (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.
 - (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of



such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

10. The aforesaid rule is based on Section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which states 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 judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

11. It is thus trite that the court has unfettered discretion to make such order as it thinks fit upon sufficient reason being given for review of its decision. However, it is important that this discretion is exercised judiciously and not capriciously.
12. The Defendant seeks to set aside the judgment of this Court on two principal grounds: first, that there is an error apparent on the face of the record, and second, that there is discovery of new and compelling evidence that was not available at the time the judgment was rendered.
13. In relation to the alleged error on the face of the record, the Defendant argued that the Court proceeded to issue judgment in favour of the Plaintiff despite there being no certificate of lease exhibited in support of the Plaintiff's case. He contended that the certificate of lease presented was in the name of one Christopher Kimondo and not the Plaintiff. This submission, however is fundamentally flawed. The certificate of lease presented to the Court was registered in the name of one Christopher Kimondo, and as per entry number 5 therein, the title was transferred to the Plaintiff on 31/3/2016. That endorsement on entry no 5 is sufficient for this court to hold that the suit land belongs to the plaintiff. The assertion that the Plaintiff was required to produce a separate certificate of lease in his own name to prove ownership is, with respect, a clear misapprehension of the legal effect of entries in the register under the Registration of Titles Act. It demonstrates a serious misunderstanding of the land tenure and title registration regimes applicable in this jurisdiction. The Court was satisfied, and rightly so, that the Plaintiff had established ownership through the documentary evidence presented.
14. On the second ground, the Defendant averred that new evidence has come to light which was not available at the time of trial. This new evidence, as understood by the Court, relates to the Plaintiff's purported failure to comply with the special conditions set out in the certificate of lease. However, this issue was raised by the Defendant in their preliminary objection dated 10/5/2022 filed alongside the statement of defence in response to the Plaintiff. The Court, in its judgment, considered and made a determination on this issue.
15. I find the other matters arising from the search at the land registry to be matters that the defendant could have handled at the hearing stage. In any event, the Defendant has failed to demonstrate that the purported evidence is in fact new or that it was previously unavailable despite the exercise of due diligence. I say so because information regarding land is usually and readily accessible at the relevant registries within this jurisdiction. The Defendant has not shown that his previous advocates made reasonable efforts to obtain such information or that such attempts proved unsuccessful.
16. In view of the foregoing, the Court finds that the grounds advanced by the Defendant do not meet the threshold for review or setting aside of the judgment. There is no demonstrable error apparent on the



face of the record, nor has the Defendant presented any genuinely new and credible evidence that could not have obtained with due diligence prior to the trial. The application dated 18/7/2024 is therefore devoid of merit and it is hereby dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 28TH DAY OF MAY 2025.

MWANGI NJOROGE

JUDGE, ELC MALINDI.

