



**Thiribi v Thimangu & another; County Government of Meru (Interested Party) (Environment and Land Appeal E002 of 2022) [2022] KEELC 15311 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15311 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E002 OF 2022  
CK NZILI, J  
DECEMBER 7, 2022**

**BETWEEN**

**JULIUS MUTI THIRIBI ALIAS KARINGURI ..... APPLICANT**

**AND**

**STANLEY THIMANGU ..... 1<sup>ST</sup> RESPONDENT**

**MUGAMBI JACOB ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF MERU ..... INTERESTED PARTY**

**RULING**

1. By an application dated April 27, 2022 the court is asked to review its orders issued on April 21, 2022 and all the subsequent orders on account of new evidence previously unavailable at the time the orders were made. The application is supported by an affidavit of Julius Muti Thiribi alia Karuguri sworn on April 27, 2022.
2. The application is opposed by the respondents through a replying affidavit of Stanley Thimangu, the 1<sup>st</sup> respondent sworn on July 29, 2022, on the basis that it is brought in bad faith; the aim is to deny them from enjoying fruits of their judgment; it is a delaying tactic; the appeal has no chances of success; no new evidence is available and no security has been provided.
3. With leave of court, parties filed written submissions dated September 2, 2022 and October 3, 2022 respectively.
4. It is the applicant's submissions that section 3A of *Civil Procedure Act*, order 12 rule 7 and order 45 of the *Civil Procedure Rules* permits the court to set aside *ex parte* orders and grant stay of execution orders. Reliance was placed on *Esther Wamaita Njibia & 2 others vs Safaricom Ltd* (2014) eKLR.



5. On the other hand, the respondents submitted that the orders sought to be reviewed have not been attached, no new evidence was available and if any none has been illustrated and or demonstrated to enable the court to act from an informed ground, otherwise the applicant is on a speculative mission.
6. The Court of Appeal in *DJ Lowe & Co vs Ltd Banque Indosuez* CACA No 2/7/1998 held:
 

“Where an application for review is based on discovery of fresh evidence, the court must exercise greatest care as it is easy for a party who has lost, to see weak part of his case and the temptation to lay and procure evidence which will strengthen that weak part and put a different complexion. In such event, to succeed, the party must show that there was no remissness on his part in adducing all possible evidence at the hearing”.
7. In *Rose Kaisa vs Angelo Mpanju Kaiza* (2009) eKLR, the Court of Appeal cited with approval Mulla on Civil Procedure Code 15<sup>th</sup> Ed at page 2126 thus:
 

“Application on this ground must be treated with great caution and as required by rule 4 (2) (b), the court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the alleged facts. Before a review is allowed on the ground of discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made”.
8. Applying the foregoing principles to the instant application, the applicant came before this court *vide* an application dated April 22, 2022 which was certified urgent on April 25, 2022 and issued with an *inter-partes* hearing for May 23, 2022.
9. The applicant filed another application dated April 27, 2022 which the court certified urgent, issued orders of *status quo* and ordered it to be served for interpartes hearing on May 23, 2022.
10. On May 23, 2022 the parties were directed to appear on July 4, 2022 whereof directions were given to file written submissions by July 27, 2022. On July 27, 2022, parties appeared, orders of *status quo* were extended and the respondent granted time to reply to the application dated April 27, 2022.
11. From the record of the court, there was no ruling made on April 25, 2022. All what the court stated was that there was no evidence of an impending execution hence ordered the application dated April 22, 2022 to be served for *interpartes* hearing. The court did not hear and determine the application on merits. In support of the application was only a copy of the judgment and not a decree.
12. There was nothing attached in the nature of a notice of eviction in line with section 152 E of the *Land Act*. In the application dated April 27, 2022, the applicant has attached an order dated April 21, 2022. By any stretch of imagination, that order is not a decree in line with the judgment appealed against and delivered on December 7, 2021.
13. Therefore, such cannot be said to be new and important evidence which was not before the court on the date of April 25, 2022. The court merely certified the application urgent and declined to grant any *exparte* orders.



14. Similarly, after the copy of the order aforementioned was brought to the attention of the court in the application dated April 27, 2022, it granted orders of *status quo* essentially stopping any precipitate action against the applicant pending hearing and determination of the two applications inter-parties.
15. Consequently, the application dated April 27, 2022 is not only misplaced, unnecessary, but also lacking merits. I proceed to dismiss it with costs and direct that the parties to file and serve written submissions on the application dated April 22, 2022 within 30 days from the date hereof. *Status quo* to subsist.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 7TH DAY OF DECEMBER, 2022**

**In presence of:**

C/A: Kananu

Nyenyire for applicant

Mrs. Otieno for respondents

**HON. C.K. NZILI**

**ELC JUDGE**

