



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND CASE AT MERU**

**ELC CASE NO. 63 OF 2000**

**BETHA NDUMBA M'TWARUCHIU.....PLAINTIFF/APPLICANT**

**VERSUS**

**WACHIRA WAMBUGU.....DEFENDANT/RESPONDENT**

**RULING**

1. This ruling is in respect of two applications one dated 25.7.2019 filed by the plaintiff and the other dated 31.10.2019 filed by the defendant. On 28.11.2019, this court gave directions for the two applications to be heard by way of written submissions.

**Application dated 25.7.2019**

2. The plaintiff is seeking an order for review of the Judgment of the court dated 28.11.2018 and to order that parcel **Laikipia/Daiga Umande Block 6/398** be registered in her name.

3. The grounds in support of this application are that the court had found that the aforementioned parcel 6/398 probably does not exist yet she followed up the issue with lands registry and found that the land exists. To this end, she obtained a certificate of search dated 26.6.2019 indicating that parcel Laikipia/Daiga Umande Block 6/398 measuring 0.44 ha. is registered in the name of Government of Kenya.

4. The defendant has dwelt much on how he was not served with various documents. However in paragraph 7 and 8 of his replying affidavit filed on 8.11.2019 he states as follows:

***“I am in no objection to the judgment and decree of this court being reviewed since L.R Laikipia/Daiga – Umande Block 6/398 was not considered in the judgment and my application also seeks review. That I have also been following on the L.R No. Laikipia/Daiga – Umande Block 6/398 with the land registry and I was told that it was available for transfer to me”.***

5. Defendant further contends that his family home is actually situated on block 6/398.

6. I have gone through the entire judgment and I find that none of the parties could really pin point anything to do with parcel 6/398. The plaintiff was claiming ownership of parcels 6/396, 397 and 399, while defendant was claiming parcel No. K112. Thus in my judgment of 28.11.2018 I stated that; ***“It is not clear whether there exists parcel no. 398 as particulars of this parcel have not been availed”.***

7. Order 45 (1) provides that:

***“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”.***

8. In the present case, both parties allude to the discovery of this parcel number 6/398. The plaintiff has even availed a certificate of official search indicating that the said parcel is registered in the name of the Government of Kenya. The only problem is that each party desires to have the said parcel registered in their respective names.

9. In my judgment, I had directed that the parties share whatever is available equally on the ground. The problem is that this court does not

have sufficient information to determine where this parcel 6/398 is positioned on the ground. The only reasonable but painful route is to have a fresh trial to enable parties to assert their claim of the new parcel properly.

**10. In the circumstances the application dated 25.7.2019 partially succeeds to the extent that the judgment delivered on 28.11.2018 is hereby reviewed and set aside for the trial to start afresh.**

**Application dated 31.10.2019**

11. The defendant prays that his name in the decree be substituted from “*Wachira Wambugu*” to “*Paul Wambugu Wachira*”. He avers that it has become impossible to have his portion of land transferred to him as ordered in the decree because the names in his identity card are not the ones in the decree.

12. The plaintiff opposes the application averring that the suit was instituted way back in 2000 and defendants had ample time to correct his name and that the application is premature.

13. I find that the defendant has given a plausible explanation as to why he desires his names to be corrected. He faced challenges when he embarked on executing the judgment. The plaintiff has not demonstrated that she stands to be prejudiced by the aforementioned prayer to correct names. There is no evidence adduced to indicate that defendant is not one and the same person as the one in the identity card availed in his application of 31.10.2019.

**14. In the circumstances, the application dated 31.10.2019 is partially allowed to the extent that defendant shall hence forth be identified as Paul Wambugu Wachira. However, having set aside the judgment of 28.11.2018, then the decree extracted thereof cannot stand and is of no consequence.**

15. Each party to bear their own costs of the two applications.

**DATED, SIGNED AND DELIVERED AT MERU THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2021**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 27.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**