**Guandai (Suing as the Administrator of the Estate of Guandai Karugu) v Tuei & 4 others (Environment & Land Case 65 of 2019) [2025] KEELC 3989 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3989 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ENVIRONMENT & LAND CASE 65 OF 2019**

**MD MWANGI, J**

**MAY 22, 2025**

**BETWEEN**

**MAGDALENE NYOKABI GUANDAI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF GUANDAI KARUGU) ..... PLAINTIFF**

**AND**

**PETER KEBET TUEI ..... 1ST DEFENDANT**

**MOHAMMED M. OMAR ..... 2ND DEFENDANT**

**HASSAN SHABA ADAN ..... 3RD DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 4TH DEFENDANT**

**SAMUEL PARTET MUPUKORI ..... 5TH DEFENDANT**

**RULING**

[In respect of the notice of motion dated 25th November 2024 seeking to set aside, review and or vary the ruling of 6th November 2024]

**Background.**

1. This court [Gicheru J], on 6th November 2024 delivered a ruling on the notice of motion dated 28th September 2023 by the 5th Defendant herein. The court allowed prayers 1, 2 and 3 thereof, thereby allowing the 5th Defendant/Applicant to amend his statement of defence and counter-claim. Secondly, the court issued an order, pending hearing and determination of this suit, inhibiting any dealings with the parcels of land known as L.R. No. Kjd/Olekasasi/2175-83 which were subdivisions of L.R. No. Kjd/Olekasasi/12. Thirdly, the court joined the Land Registrar – Ngong, as an interested party in this suit.

2. In its ruling, the court noted that the orders sought were within its discretion.

3. It is the above cited ruling that the Plaintiff/Applicant seeks to review. The Plaintiff's basis is that at paragraph 5 of its ruling, the court observed that the Plaintiff did not file a response and submissions to the application dated 28th September 2023. The Plaintiff terms this as an error apparent on the face of the record since he had filed a replying affidavit dated 1st February 2024 on the same date and subsequently filed submissions on 9th September 2024.

4. The Plaintiff argues that the court proceeded to make its decision on the premises that he had not opposed to the application in any manner howsoever. He opines that it is a sufficient reason for the court to review, vary or set aside its ruling of 6th November 2024.

5. The Plaintiff further asserts that the 5th Defendant is neither in possession of any of the parcels of land nor is he the registered owner of any of them.

**Responses by the Respondents**

6. The application is opposed by the Defendants/Respondents.

7. On their part, the 1st, 2nd and 3rd Defendants filed a joint response in form of a replying affidavit sworn on 24th March 2025. They affirm that the ruling of the court was made on merit after due consideration of the facts and arguments presented before the court. The intention of the Plaintiff is to re-litigate issues that have already been determined. The Plaintiff's application therefore amounts to an abuse of the process of court merely intended to delay the hearing and conclusion of this case.

8. It is the 1st, 2nd and 3rd Defendants' position that the inhibition orders were issued to preserve the subject matter of the suit awaiting conclusion of this suit since further alienation would render the suit an academic exercise and unnecessarily complicate it. They further assert that the Plaintiff has not demonstrated any substantial prejudice he will suffer if the inhibition orders remains in force.

9. The 5th Defendant too responded to the Plaintiff's application vide the replying affidavit of one Samuel Lenget Pertet sworn on 28th March 2025. He depones that the orders of the Court have already been actioned by the Land Registrar. He attached copies of the affected titles to demonstrate the same.

10. It is the 5th Defendant's position that the Plaintiff/Applicant has not demonstrated the substantial prejudice he stand to suffer if the inhibition orders remain in force. There are therefore no compelling grounds to justify review. The 5th Defendant further states that this court does not have the jurisdiction to review the ruling of 6th November 2024.

**Court's directions.**

11. The court's directions were that the application be canvassed by way of written submissions. The Plaintiff/Applicant, the 1st, 2nd and 3rd Defendants and the 5th Defendant complied and filed their respective submissions. I have had the benefit of reading the submissions and considering them in writing this ruling.

**Issues for determination**

12. Having considered the application, the responses thereto as well as the submissions by the parties, two issues present themselves for determination as follows:-

    a. Whether the court has the jurisdiction to review the impugned ruling; and

    b. Whether the Plaintiff's application is merited.

**Analysis and determination.**

**A. Whether this court has the jurisdiction to review the impugned ruling.**

13. The ruling of 6th November 2024 was delivered by my predecessor, Gicheru J who has since been transferred from this station. The Respondents therefore are of the view that I have no jurisdiction to review his ruling.

14. Review is provided for under Section 80 of the *Civil Procedure Act*. The Section provides that,

> " 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.

15. The meaning of the phrase "court" as used in Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules was authoritatively, elaborately and graphically determined by Musyoka J in the case of Njuka v Gituma [2023] KEHC 3180 [KLR], in the following words;

> " So, what is Section 80 of the *Civil Procedure Act* saying? That the review of an order or decree of the court is to be by the court which made the order or passed the decree. What does "court" mean, in the context of Section 80? The High Court station or Magistrate Court station seized of the matter. That would mean the court itself not the judicial officer presiding over matters at that court, so that when the officer is transferred, the court remains, and review would be by the court, not the officer who has gone on transfer.
>
> Applying that provision to the instant situation, it would mean that the order or decree, sought to be reviewed, was made or passed by the High Court of Kenya at Vihiga, then presided over by Musyoka J. Musyoka J has been transferred to Busia, but the High Court at Vihiga has remained. It is therefore the High Court at Vihiga which has the jurisdiction to review that judgment of October 22, 2022 and not Musyoka J, as the High Court at Vihiga was not transferred, but the presiding officer was. The succeeding officer now constitutes the High Court at Vihiga, and should handle the review, going by Section 80."

16. I fully agree with Musyoka J. I have nothing useful to add. This court has the jurisdiction to consider the application for review by the Plaintiff.

**B. Whether the Plaintiff's application is merited.**

17. Order 45 rule 1 of the Civil procedure Rules sets out the conditions upon which a review may be considered. The conditions are the discovery of new and important matter or evidence, which after the exercise of due diligence was not within the Applicant's knowledge or could not be produced by him at the time when the decree was passed or order made, mistake or error apparent on the face of the record, or any other sufficient reason. The application must further be made without unreasonable delay.

18. The Court of Appeal in Benjoh Amalgamated Limited and another v Kenya Commercial Bank Limited [2014] eKLR, explained the philosophy behind the provisions for review as follows;

> " The basic philosophy inherent in the concept of review is acceptance of human fallibility and acknowledgement of frailties of human nature and sometimes possibility of perversion that may lead to miscarriage of justice."

19. Again in the case of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR, the Court of Appeal had expounded on the principles of review in the following words;

> " A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter nor can it be a ground for review that one court preceded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."

20. In his application, the Plaintiff asserts that there is an error apparent on the face of the ruling of 6th November 2024. The alleged error on the face of the ruling is the failure by the court apparently to consider the replying affidavit and submissions filed by the Plaintiff. It is the Plaintiff's position that had the court considered them, it would have arrived at a different decision.

21. The failure to consider the replying affidavit and submissions, with a lot of respect to the Plaintiff does not amount to an error apparent on the face of the records. It cannot be a ground for review of the ruling. It is a ground for appeal against the ruling; not for review.

22. This court has gone further to peruse the record in a bid to confirm the veracity of the claim by the Plaintiff/Applicant. On 4th December 2023, when the application dated 28th September 2023 was scheduled for inter partes hearing, the Plaintiff was granted fourteen [14] days to file and serve a response to the application. Essentially therefore, the Plaintiff ought to have filed and served the replying affidavit by the end of the day, 16th day of December 2023.

23. According to his testimony in the supporting affidavit sworn herein in support of the application under consideration, the Plaintiff filed the response to the application dated 28th September 2023 on 1st February 2024. This was out of the timelines granted by the court. He did not bother to seek leave to extend time. Consequently therefore, the replying affidavit was as good as nothing having been filed out of time and without leave of court.

24. The upshot is that the court finds no merits in the application dated 25th November 2024. It is hereby dismissed with costs to the Respondents.

25. In conclusion, I note that this matter has not been set down for hearing since it was filed. Mine is the 3rd ruling on an interlocutory application. The unnecessary filing of interlocutory applications does nothing but delay the conclusion of cases. It should stop.

26. The court will henceforth set down this case for case management conference forthwith with a view to fixing a hearing date and hearing the main suit.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Gichuki for the Plaintiff/Applicant

Ms. Wekesa for the 1st, 2nd & 3rd Defendants/Respondents

Ms. Muriungi h/b for Mr. Mugambi for the 5th Defendant/Respondent

N/A by the 4th Defendant/Respondent

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**