



**Manoti v Magembe & 2 others (Environment & Land Case
52 of 2019) [2025] KEELC 4213 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 52 OF 2019**

**MD MWANGI, J
MAY 22, 2025**

BETWEEN

STEPHEN KENGERE MANOTI PLAINTIFF

AND

JOHN NYANGARESI MAGEMBE 1ST DEFENDANT

JOYCE KEMUNTO NYAKUNDI 2ND DEFENDANT

LAND REGISTRAR 3RD DEFENDANT

RULING

(In respect of the notice of motion dated 26th February 2025 seeking for orders to review and or set aside the ruling of 5th October 2024 and the consequential orders and lift the caution placed over the suit property)

Background

1. The application under consideration is the notice of motion dated 26th February 2025 essentially seeking for two main orders. The first prayer is that this court be pleased to review and or set aside its ruling delivered on 5th October 2024 and the consequential orders. The 2nd prayer which is hinged on the success of the first one is that this court be pleased to order the lifting of the caution placed over parcel No. L.R. Kjd/Kitengela/20366 by one George Nyakundi.
2. The application is premised on the grounds on the face of it and on the supporting affidavit of Stephen Kengere Manoti sworn on 26th February 2025 and the further supporting affidavit sworn on 7th March 2025. The applicant alleges discovery of new and important matter and evidence which after exercise of due diligence was not within the knowledge of his deceased advocate and could therefore not have been produced at the time the order was made.



3. The applicant asserts that he cleared payment of Kshs. 15,000,000/- decreed vide the consent judgment recorded on 11th November 2019. Having paid the sum of Kshs. 15 million, the applicant states that he believed that this file was closed as there was nothing pending as far as he was concerned.
4. In his further affidavit, the applicant avers that he paid the decretal amount to the respondent through his then Advocate Erick N. Amati & Company Advocates.

Response by the plaintiff

5. The plaintiff/respondent responded to the application by way of a replying sworn on 4th March 2025. She deposes that the Honorable Court entered a consent judgment against the 1st and 2nd defendants on 22nd November 2019 for the sum of Kshs. 15,000,000/-, in default whereof execution was to issue.
6. On 8th May 2023, the court indeed allowed execution of the decree on account of default. The applicant herein filed an application dated 11th May 2023 seeking to review the execution orders issued by the court in favour of the plaintiff. However, the application was dismissed by the court. The court stated that the application failed to meet the threshold for review.
7. The plaintiff/respondent deposes that on 17th November 2023, she filed an application seeking that the Deputy Registrar of this court be authorized to take all necessary actions on behalf of the 1st and 2nd defendants as may be required for execution of the consent judgment. The court upon hearing and considering that application allowed it vide a ruling dated 15th October 2024.
8. The application under consideration seeks to review the ruling of 15th October 2024. The plaintiff/respondent points out that the applicant has essentially filed the same application, as the earlier one for review; the only addition being the introduction of bank statements. In the previous application, the applicant had attached copies of cheques supposedly confirming settlement of the decree.
9. The plaintiff avers that the bank statements too cannot be new and important matters and evidence since they were at the disposal of the applicant. This application amounts to an abuse of the process of court. The issues raised in the current application are identical to those already determined by the court. The applicant's intention is only to frustrate the execution process and deny the plaintiff the fruits of her judgment.
10. The applicant filed a further affidavit sworn on 7th March 2025 reiterating the assertions in the supporting affidavit filed alongside the application.

Court's direction.

11. The court's directions were that the application be canvassed by way of written submission. The applicant filed his submissions which I have had the opportunity to read and consider in writing this ruling.

Issues for determination.

12. Having considered the application, the response by the plaintiff and the record of this court, one fundamental issue commends itself for determination. Whether the instant application constitute and amounts to an abuse of the process of the court.

Analysis and determination.

13. It is not disputed that this is the 2nd application seeking review by the applicant in this case. As correctly pointed out by the plaintiff/respondent, the applicant had filed an earlier application dated 11th May



2023 seeking to review the execution orders issued in favour of the plaintiff. The application was dismissed by the court having failed to meet the threshold for review. It was upon the dismissal of that earlier application that the plaintiff on her part moved the court vide her application dated 17th November 2023, seeking that the Deputy Registrar of this court be authorized to execute the necessary documents to facilitate the execution of the decree in her favour against the applicant. The same was allowed vide the ruling of 15th October 2024. It is that ruling that the applicant seeks to have reviewed on the premises of discovery of new and important matters or evidence.

14. The current application as the plaintiff has pointed out is but a replica of the earlier application for review the only difference being the addition of the bank statements.
15. I have looked at the current application and the earlier application. I fully agree with the plaintiff's sentiments. The current application is a replica of the earlier one, which was already determined by my predecessor in this court, Gicheru J.
16. The filing of the current application could very well be termed as one of those instances of forum - shopping. The applicant was obviously hoping for a contradictory ruling from that delivered by my brother Judge, to enable him throw a spanner into the works.
17. This court is however not only alive to the provisions of the law and procedures but also on its responsibility to at all times be vigilant to guard against abuse of the process of court.
18. Mativo J (as he then was) in the case of *Satya Bharna v the DPP & another* (2018) eKLR, stated that;
 - “The concept of abuse of the process of court/judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. The situations that may give rise to an abuse of the court process are indeed inexhaustive, it involves situations where the process of the court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of the process of court in addition to the above arises in the following situations;
 - i. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue or multiplicity of actions on the same matter between the same parties.”
19. The applicant herein has in spite of the earlier determination of the court, instituted yet another similar application over the same issues. All that the applicant has done is that he has given his earlier application a cosmetic facelift by adding the copies of bank statements in place of the copies of cheques; nonetheless he seeks the same relief on the same set of facts.
20. The applicant's application amounts to an abuse of the process of court. It is improper, unfair and dishonest use of the legal process with ulterior motives other than the genuine pursuit of justice.
21. This court exercising its inherent jurisdiction to prevent its process from abuse strikes out the application dated 26th February 2025 with costs to the plaintiff.

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:



Mr. Ondieki for the Applicant
N/A by the Plaintiff/Respondent
Court Assistant: Mpoye

M.D. MWANGI

JUDGE

