



**M'torugoji v Meru County Land Registrar & 2 others (Environment and Land Judicial Review Case 31 of 2013) [2024] KEELC 730 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 730 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 31 OF 2013**

**CK NZILI, J**

**FEBRUARY 14, 2024**

**BETWEEN**

**JEREMIAH M'NJOGU M'TORUGOJI ..... APPLICANT**

**AND**

**MERU COUNTY LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**MERU COUNTY LAND SURVEYOR ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By an application filed on 17.7.2023, this court is asked to review its ruling given on 31.5.2023, on the basis of new and vital information that was not available when the ruling was made. The application is based on the grounds on the face of it and a supporting affidavit sworn by Jeremiah M'Njogu M'Torugoji on 7.6.2023.
2. The applicant avers that there are documents related to the matter he has attached as annexures marked J.M. 1 (a), (b), (c) & (e) a JM1 (iv) & (xi), showing that the respondents were not opposed to the proceedings except the Hon. Attorney General who has ignored to call to concede for the respondents in court on the agreed issues. The applicant avers this being a matter settled by consent at the Court of Appeal; it was only fair and expedient to grant the orders requested by the respondents through the applicant, to enable them implement the consent order. From the 1<sup>st</sup> respondent's letters, the respondents had stated they would comply with the execution of the court of appeal consent order but could not accomplish this due to the wrong subdivisions and the wrong transaction.
3. The court should not defer the respondents from implementing the court of appeal consent order by declining the reinstatement order they require. The applicant averred that the 1<sup>st</sup> respondent had advised him to seek the cancellation of the wrong land subdivisions and the wrong transactions, to reinstate the suit land for fresh subdivisions and proper transactions for the respondents, and



- to concede to these proceedings automatically. That the respondents' official commitments were themselves evidence in these proceedings, and since this was a land matter, the court has jurisdiction to hear and conclude this case as it was an undisputed case.
4. A cursory glance at the annexure marked J.M. 1 (a) shows it relates to Nyeri Court of Appeal Civil Application No. Nai 7 of 1988 between M'Turogoji Kiramunya vs Samuel M'Murithi. Annexure marked J.M. 1 (b) relates to Nyeri Court of Appeal Civil Application No. Nai 43 of 1991 between Twarugoji Kiramunya vs Janet Tirindi Kathunguri. In a supplementary affidavit sworn on 14.9.2023, the applicant avers he seeks the court to enforce execution of the Court of Appeal orders made by consent of parties. He relies on letters from the 1<sup>st</sup> respondent dated 1.11.2010, 9.9.2014 and the court of appeal letter dated 14.7.1992. The applicant says there should be no judicial conflict between the Court of Appeal orders and the enforcement of the same by this court.
  5. The applicant also states the failure to execution of the orders by the respondents was referred to the Commission on Administrative Justice as per a letter dated 9.5.2013.
  6. The applicant states a group of Meru High Court judges gave conflicting judgment with regard to the Court of Appeal consent order, some who falsely ruled that the Court of Appeal dismissed the stay of execution. He has attached several letters and orders as J.M.N. 1 (a), (b), JMN1 (III), and J.M.N. (j) & (e).
  7. The application was served upon the respondent and return of service sworn and filed by John K. M'Kiria on 28.9.2023 and 19.10.2023, respectively.
  8. Section 80 of the [Civil Procedure Act](#) and Order 45 [Civil Procedure Rules](#) grants the power to the court which has made an order to review vary or set aside its orders or decree based on:
    1. Error or mistake apparent on the face of the record.
    2. New and vital evidence or material which, with the exercise of diligence, was not available at the time the order or decree was made.
  9. In the ruling made on 31.5.2023 the court had been asked to declare the order dated 26.9.1990 invalid due to a subsequent order made on 19.3.1991. The second prayer was that the unexecuted order dated 19.3.1991, be deemed as overtaken by events due to a consent order from the court of appeal dated 17.3.1991. The third prayer was for the Meru Central Land Registrar and Land Surveyor to be directed to reinstate L.R No. Ntima/Ntakira/685, register L.R No. 19 not to charge further registration fees and draw new survey mutation forms to be signed by the administrator of the estate and the applicant be set at liberty to execute the Court of Appeal order without any hindrance from the 1<sup>st</sup> & 2<sup>nd</sup> respondents.
  10. As part of the applicant's submissions dated 13.2.2023, the applicant referred and attached letters dated 1.11.2010, 9.1.2014, 23.12.2008, court orders made on 15.5.1988, 19.3.1991, and 17.5.1991. Further, in the application filed on 28.10.2013, the applicant had attached annexures marked J.M.N. 1, 2, 3 (a), (b), (c), (4) (a) & (b), 5(a), (b) & (c), 6 (a) & (b), (c). Annexure marked J.M.N. 6(a) was the letter the 1<sup>st</sup> respondent was allegedly advising the applicant to apply for reinstatement of L.R No. Ntima/Ntakira/685 to enable the implementation of the court order.
  11. In the instant application, the applicant now relies on J.M.N. 1 (a) which relates to an order Nyeri Civil Appeal No. Nai 7 of 1988, order and ruling in Meru H.C.C.A No. 21 of 1990, J.M.N. (c), (e), (g), (b), official search dated 6.3.2023 Ministry of lands, letters dated 20.2.2003, 9.5.2013, 10.7.2013, 4.9.2013, service of the court of appeal order received on 11.10.2022 an affidavit of service and a memorandum



of appeal in Nyeri Court of Appeal No. 175 of 2022, relating to a ruling by Hon. Justice E.M Murithi dated 30.11.2022 and a ruling in Nyeri Civil Application No. 16 of 2018.

12. In *D.J Lowe & Co. Ltd vs. Banque Indosuez* (2018) eKLR, the court held that where an application or review is based on the discovery of fresh evidence, the court must be careful for it was easy for a party who has lost to lay and procure evidence that will strengthen the weak part of his case. The court said a party must show that there was no remissness on his part, acted with due diligence, and that the existence of the evidence was not within his knowledge.
13. In *National Bank of Kenya vs Ndugu Njau* 1997 eKLR, the court said review may be granted if there was an error or omission that was self-evident. In *Republic vs Advocates Disciplinary Tribunal ex parte Apollo Mboya* (2019) eKLR, the court said new material qualifies to be new, and essential evidence it is of such a nature that would not have been discovered had the applicant exercised due diligence and was not available to the court.
14. What the applicant has attached are correspondences and court orders unrelated to the application, which was filed in October 2013. Some of the correspondences and orders happened between 2013 and before the delivery of the ruling in May 2023. The correspondence, rulings, and orders involved the applicant. So, the applicant was privy to the alleged material but chose not to attach it to his earlier application. Be that as it may, the relevance to the ruling and the competence of the proceedings herein was the basis of this court's ruling. The court made a finding that other than the application dated 28.10.2013, there was no other substantive suit or proceeding, properly instituted by the applicant for this court's determination.
15. Additionally, the court made a finding that any execution of the court of appeal orders must be made in the primary suit from which the appeal arose. In the Court of Appeal Nyeri Civil Application No. 16 of 2018, where the applicant was a party, the court reiterated that the applicant should execute in Meru H.C Civil Appeal No. 21 of 1990. This is the file where the applicant should direct his enforcement mechanism. He cannot reopen a new file and purport to demand an execution of a decree or decrees from distinct courts and made in different files. The execution process must be initiated in a particular file from which a court's decree emanated.
16. Consequently, I find there is no new evidence or important information that, had the court taken into account, would have arrived at a different decision on the ruling dated 31.5.2023.
17. The upshot is that I find the application incompetent and lacking merits. The same is dismissed with costs. As to the subsequent applications filed by the applicant during the pendency of this ruling, the same is dismissed for being an abuse of the court process. This court lacks supervisory jurisdiction on orders or decrees issued by sister courts of concurrent jurisdiction, which the two applications dated 18<sup>th</sup> and 21<sup>st</sup> December 2023 sought orders against.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
ON THIS 14<sup>TH</sup> DAY OF FEBRUARY 2024**

**In presence of**

**C.A Kananu**

**Jeremiah in person**

**Miss Maina for 1<sup>st</sup> & 2<sup>nd</sup> respondent**

**HON. CK NZILI**



**JUDGE**

