



**Langat v Director of Land Adjudication and Settlement & 3 others;
Sabuni & 180 others (Interested Party) (Environment & Land Case
26 of 2014) [2024] KEELC 3694 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3694 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 26 OF 2014**

**FO NYAGAKA, J
MAY 8, 2024**

BETWEEN

NATHANIEL LANGAT PLAINTIFF

AND

**THE DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 1ST
RESPONDENT**

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT
KITALE 2ND RESPONDENT**

SECRETARY, NATIONAL LAND COMMISSION 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

KENNEDY MALABA SABUNI & 180 OTHERS INTERESTED PARTY

RULING

1. By a Notice of Motion dated 10/03/2023 the Interested Parties moved this court under Sections 1A, 1B, 3, 3A, 34 and 80 of the *Civil Procedure Act*, Order 45, Rule 1, Order 50 Rule 1 of the Civil Procedure Rules and “any other of further enabling provisions of the law.” They prayed for:-

1. That this Honourable Court to review the judgment delivered by Honourable Justice Mwangi on 31st January 2019 and make a declaration that the interested parties have fully paid the plaintiffs/respondent’s loan with the Settlement Fund Trustees and that plot No. 2 Mutambo Scheme to be discharged forthwith.



2. That the Honourable Court be pleaded to order the 1st and 2nd Defendants do finalize the process of issuing titles to the Interested Parties herein.
 3. That in the alternative, this court do make such orders that the interest of interested parties will be demonstrated and ascertained by the honourable court.
 4. That the costs of this application be provided for.
2. It was based on the grounds that on 31/01/2019 Hon. Justice Mwangi delivered a judgment in which he found that the Plaintiff had failed to prove that he had repaid the loans or that he has any justification for default. The Interested Parties have since contributed and paid the Plaintiff/Respondent's loan with the Settlement Fund Trustees (SFT) which was duly acknowledged. In the circumstances, the plaintiff did not owe the Defendants any money as regards the loan over the suit land. The suit parcel ought to be discharged for onward transfer to the Interested Parties who purchased it from the plaintiff. The Interested Parties are justifiably apprehensive that the Plaintiff/Respondent will not seek to have the title of the suit land discharged as so as to fulfill their contractual obligations to the interested parties.
 3. Under Section 34 of the *Civil Procedure Act* this court should determine all questions arising between the parties to a suit in which a decree was passed. In view of the foregoing there is sufficient reason cause to review the judgment. The application has been made diligently and without unreasonable delay. Unless the judgment is reviewed as prayed the Interested Parties will not be able to advance any claim against the plaintiff or get their individual titles and suffer grave prejudice accordingly.
 4. The application was supported by the affidavit of Kennedy Malaba Sabuni who repeated the contents of the grounds by way of depositions. He deposed that the Applicants were beneficial owners of portions of land known as SFT (Settlement Scheme), Mutambo Farm Plot No. 23, whose size was approximately 150 acres or thereabouts in Trans Nzoia County, being purchased it from the plaintiff. He annexed and marked as KMS1(a-e) copies of sale agreements of purchase. The Applicants filed an application to be enjoined as Interested Parties in to their suit on 26/07/2017 and the court granted them the orders. That the matter was heard and concluded and final judgement delivered on 31/01/2019. The court found that the plaintiff had failed to prove that he had repaid the loan to the defendants and there was no justification for his default. He annexed a copy of the judgment and marked it as KMS-2. The deponent further stated that the Interested Parties had since contributed and paid for/cleared the loan with the Settlement Fund Trustees and it was acknowledged. He annexed and marked KMS-3, a copy of the repayment dated 11/10/2022. That in the circumstances, the plaintiff did not owe any money and they prayed that their suit land be discharged. Lastly, that the plaintiff had deliberately refused to honor the official demand by the Ministry of Lands Physical Planning to execute all relevant transfer documents in favour of the Applicants. He annexed and marked as KMS-4. A copy of transfer documents dated 15/02/2023.
 5. The Plaintiff opposed the application through a Replying Affidavit he swore on 11/03/2023. He deposed that an order for review should be made without undue delay, and four years had since lapsed from the time the judgment was delivered and the alleged error apparent on the face of the record hence it would not be granted. That there is no privity of contract between the Applicants and the Directors of the 1st, 2nd and 3rd Defendants and the Defendants had a contract only between them and him while the agreements with the Applicants are between him and them and they better wait for him to process his title deed. That he was advised by the Advocate on record that the claim by the Applicants constituted a separate course of action and the same should not be entertained as prayed for dismissal of the Application for review.



6. The application was disposed of by way of written submissions. The applicants filed their submissions on 29/06/2023. The Respondents submissions were dated 20/07/2023 and filed on 21/07/2023. This court will consider both the Applicants and Respondents submissions when determining the Application herein.
7. I have considered the application, the law and the submissions of the rival parties. There are two issues for determination in this matter. The first one is whether the application meets the threshold for review. And the second one, who should meet the costs of the application.
8. On the merits of the Application, the Applicants call for a review of impugned judgment under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Under two provisions, in order for a party to succeed in an application for review and setting aside of a judgment, decree, ruling or order of a Court, the applicant must prove that:
 - i. There is discovery of new and important matter or evidence which after the exercise of due diligence was not within the applicants' knowledge and which could not therefore produce at the time the order was made or,
 - ii. Some mistake or error apparent on the face of the record or,
 - iii. Any other sufficient reason
 - iv. Further, and which ground flows also from logic is that the application should be brought without undue delay.
9. In the instant application, the Applicants indicate that after the Court delivered its judgment they proceeded to make further payments to the SFT on behalf of the Respondent since they are beneficial owners of the land by way of purchase, and they have since completed the payment. They are apprehensive that the Plaintiff will not move with speed to facilitate their acquisition of titles to the portions of land they claim. They have made the application in March, 2023.
10. The issue of time of making the application is straight forward. Does four years constitute delay? The judgment was delivered on 31/01/2019 and the instant application filed on 10/03/2023 a period of four (4) years and two months. Clearly, the reason why it took long to bring such as application ought to be explained. In law, delay however small, even if it is a day, ought to be explained to the satisfaction of the Court. While the principle of equity is that delay defeats equity, in law the rule is that delay prejudices both the party seeking extension and against those whom he seeks it. Except where the delay is neither adverted to or in control of the applicant the rest of the instances have to bear concrete cogent reasons for it.
11. I find that the period of 4 years and 2 months has not been explained to the satisfaction of the Court. The fact that the buyers or applicants went into a mode of pooling resources together to pay the loan on behalf of the Plaintiff, an issue the court did not direct but they did so on their own volition and in their interest, and they decided to take that long is not sufficient reason for such late application. The Court cannot wait for parties to carry out any acts at their pace. This Application would fail on that account alone. But permit me to add the following.
12. The next issue is whether the judgment should be set aside. The Applicant do not attempt to give the manner in which the reason they give for setting aside is in line with the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Under the two provisions, as stated above the reasons are circumscribed in the law and even when there is "any other sufficient reason" as provided for under Order 45 Rule 1, it must only be analogous to the requirements stated therein.



13. In the instant case, the applicants argue that from the time the judgment was delivered on 31/01/2019 they have since paid Settlement Fund Trustees the money owing to it by the Plaintiff hence they call for processing of titles, and that is a new matter. This Court doubts whether the applicants understand what they wish to obtain in relation to the suit land and from whom, and whether they that can on any way relate to the instant suit. The fact they were granted an order to be enjoined as interested parties did not entitle them to make such prayers as sought. This application cannot be granted for a number of reasons. First, this court notes that the judgment impugned was delivered upon the court considering the issue whether the Plaintiff had any outstanding arrears owned to the defendants. As at the time the Court considered the merits of the judgment it was clear and indeed to true that he had not. Then the court considered whether there was any justifiable reason for the delay. Evidence was led to that effect and the court found none. As a fact the Court found that the Plaintiff, indeed, owed the defendant sums of money. For that reason, his claim did not succeed. In order for an application of this nature to succeed, the applicant should show that there is an error apparent on the face of the record a matter or evidence which the court ought to have considered and which with the due diligence would not be available at the time.
14. In the instant case, the applicants admit through their depositions that they made payments to the SFT after judgment. With due respect, the issues that came into existence after the delivery of the judgment. They would not in any way go to the merits of the judgment. In fact, they raise new issues which can only be issues that can be determined in a different suit or claim than the instant one.
15. It is for those reasons that I find no merit in the application hearing and I dismiss it with costs to the respondents.
16. Since the judgment has not been set aside, any other prayer, such as an order for the Land Registrar to complete issuance of the titles fails. In short, the entire application herein fails.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 8TH DAY OF MAY, 2024.

HON. DR. IUR FRED NYAGAKA
JUDGE, ELC, KITALE

