



**Wahome & 4 others v Mathenge (Environment & Land Case
450 of 2014) [2024] KEELC 4071 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4071 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 450 OF 2014**

JO OLOLA, J

MAY 9, 2024

BETWEEN

FG WAHOME 1ST PLAINTIFF
JW MUNUHE 2ND PLAINTIFF
PH GITONGA 3RD PLAINTIFF
JM MUMU 4TH PLAINTIFF
FN KAROBIA 5TH PLAINTIFF

AND

STANLEY WANJOHI MATHENGE DEFENDANT

RULING

1. I have before me two Applications for the Court’s consideration. By the first one, a Chamber Summons Application dated 2nd August 2023, the Plaintiffs pray for the following:
 1. That the Court be pleased to authorize the Deputy Registrar to sign transfer documents and all the relevant documents on behalf of the Respondent to facilitate transfer of the suit land to all the Parties jointly and subsequent partition to 6 equal portions for each member as per the decree issued on 18th July, 2023;
 2. That the Court be pleased to direct/order the Land Registrar Nyeri to dispense with the production of the original title deed and the Respondent’s documents required for transfer and mutation, i.e KRA Pin Certificate, Identity Cards and Passport photographs to facilitate land transfer, partition and registration of transfer and mutation forms at the Lands Office;



3. That the Kieni West Assistant County Commissioner or the OCS Mweiga be ordered to provide security during the sub-division exercise to mark the boundaries as per the distribution in P & A 54; and
 4. That the costs of this Application be in the cause.
2. The Chamber Summons Application which is supported by an Affidavit jointly sworn by F.G Wahome and P.H Gitonga (the 1st and 3rd Plaintiffs respectively) is premised on the grounds:
 - (a) That Judgment was delivered on 6th July, 2023;
 - (b) That there is no stay of execution and no appeal was preferred;
 - (c) That the Respondent has totally refused/failed to co-operate and sign the relevant documents; and
 - (d) That no prejudice will be occasioned to the Parties if the orders sought are granted since the suit land will be registered as per the decree.
3. In response to the Plaintiffs' Application, Stanley Wanjohi Mathenge (the Defendant) has on 7th November, 2023 filed herein an undated Notice of Motion Application praying for orders as follows:
 1. That the Firm of E. K. Njagi & Company Advocates be granted leave to come on record as the Advocates for the Defendant/Applicant in place of Messrs Kebuka Wachira & Company Advocates;
 2. That this Honourable Court do review its Judgment made on 6th July, 2023;
 3. That pending the hearing and determination of this Application, this Honourable Court do order a stay of execution of the Judgment and order made (on) 6th July, 2023;
 4. That in the alternative, this Honourable Court do make such other orders as it may deem just and expedient pending the hearing and determination of this Application; and
 5. That the costs of this Application be provided for.
4. The second Application is supported by an Affidavit sworn by the Defendant and is premised inter alia on the grounds:
 - (i) That the Judgment delivered did not take into account material evidence of facts on record, thus requiring for evaluation of the same.
 - (ii) That the Judgment delivered did not take into account the following pertinent issues which were raised during the hearing and at the submissions:
 - (a) That the loan advanced to the Defendant was just but a loan and was not subject to purchasing the suit land;
 - (b) That the consent of the Land Control Board was specifically issued to the Defendant and not to all Parties involved;
 - (c) That the transfer of the subject property was between the Defendant and the seller and not the Plaintiffs;



- (d) That the Defendant opted to buy land with the loan advanced yet he would otherwise have utilized it in any other way;
- (e) That the Defendant had lived and extensively developed the suit property single handedly a fact admitted by the Plaintiffs;
- (f) That the only recourse available to the Plaintiffs, if at all, is repayment of the sum advanced with interest thereon;
- (g) That the Plaintiffs did not in any way show as to how they participated in the acquisition of the suit land.
- (h) That all the minutes produced by the Plaintiffs in their evidence-in-chief did not show anything concerning the subject suit land.
- (i) In any event, there is no evidence on record which required the Defendant to pay a specific/actual amount that he borrowed from the Plaintiffs; and
- (j) That from the record, it is clear that the Plaintiffs took advantage of the Defendant especially after he was jailed.

5. I have carefully perused and considered the two Applications as well as the Grounds of Opposition dated 8th November, 2023 as filed by the Plaintiffs. I have similarly perused and considered the submissions and authorities placed before me by the learned Advocates representing the parties.
6. The two Applications before the Court stem from the Judgment delivered by this Court in favour of the Plaintiffs on 6th July, 2023. On the said date, the Court issued orders as follows:
 - (a) A declaration is hereby made that the Defendant holds the suit property in trust and for the benefit of himself and the Plaintiffs;
 - (b) An order is hereby made requiring the Defendant to transfer the legal title in respect of the suit premises to the joint names of the Plaintiffs and the Defendant and/or their respective nominees;
 - (c) The said trust between the Defendant and the Plaintiffs is hereby determined with the direction that the suit property be sub-divided equally and the resultant sub-divisions transferred to the names of the Parties herein; and
 - (d) The costs of this suit shall be borne by the Defendant.
7. By the Chamber Summons Application before the Court, the Plaintiffs contend that the Defendant has exhibited uncooperative conduct towards bringing into effect the said orders. It is their case that given the Defendant's unwillingness to co-operate in the execution of the orders, this Court should designate its Deputy Registrar to execute all documents necessary to ensure that the orders issued by the Court are realized.
8. In his Application filed in response, the Defendant does not deny that he has failed to execute the necessary documents required for the sub-division and transfer of portions of the suit property to the Plaintiffs. Instead, the Defendant holds that the Judgment delivered on 6th July, 2023 did not take into account material evidence of facts and other pertinent issues and that the same ought therefore to be reviewed by the Court.



9. As it were, on matters of review, Section 80 of the [Civil Procedure Act](#), Cap. 21, provides as follows:

“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 the Judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

10. On the other hand, Order 45 Rule 1 of the [Civil Procedure Rules](#), 2010 provides thus:

“1(1) 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 the Judgment to the Court which passed the decree or made the order without unreasonable delay.”

11. As was stated in *Republic v Public Procurement Administrative Review Board & 2 Others* (2018) eKLR:

“... Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the grounds there is a requirement that the application has to be made without unreasonable delay.”

12. In the matter before me, it is clear that the Application by the Defendant is not premised on the discovery of any new or important matter of evidence which was not within the knowledge of the Defendant at the time when the decree was passed. Instead, the Application is premised on the grounds that this Court misdirected itself on the evidence before it and hence arrived at the wrong conclusion in its Judgment. With respect, that cannot be a ground for an Application for review. A party aggrieved by the fact that a Court has arrived at the wrong conclusion either on the facts or the law can only appeal the decision. An alleged misdirection on the evidence and or the law cannot be the basis for an Application for review.

13. It follows that the Defendant’s Notice of Motion filed herein on 7th November, 2023 was completely misconceived and without any basis.

14. In the premises, I allow the Plaintiff’s Chamber Summons dated 2nd August, 2023. The Defendant’s Motion filed on 7th November, 2023 is hereby dismissed.



15. The Plaintiff shall have the costs of both Applications.

16. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 9TH DAY OF MAY, 2024.**

In the presence of:

Mrs. Wahome for the Plaintiff

No appearance for the Defendant

Court assistant - Kendi

J. O. Olola

JUDGE

