



Mutugi (Suing as the administrator and legal representative of the Estate of Mutugi Nguri Kimbiru - Dcd) v Karoki & another; Maina & another (Interested Parties) (Environment & Land Case 293 of 2014) [2024] KEELC 6521 (KLR) (8 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 293 OF 2014
JM MUTUNGI, J
OCTOBER 8, 2024**

BETWEEN

IBRAHIM MURIITHI MUTUGI (SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF MUTUGI NGURI KIMBIRU - DCD) PLAINTIFF

AND

**MARGARET WANGECHI KAROKI 1ST DEFENDANT
ANDREW WACHIRA MUNENE 2ND DEFENDANT**

AND

**JAMES PETER MAINA INTERESTED PARTY
JUSTUS IRUNGU MUTUGI INTERESTED PARTY**

RULING

1. I have before me for determination an application dated 15th November 2023 by the 2nd Defendant/Applicant praying that the Court do review its Judgment dated 12th November 2021. The Applicant is seeking an order to amend and clarify the Judgment to include a directive for the Land Registrar Kirinyaga to reinstate land parcels No. Mwerua/Kagio/2801, 2803, 3231, and 3232 and to restore the entries showing the subdivision of land parcels No. Mwerua/Kagio/715 and Mwerua/Kagio/2802. The application is predicated upon Sections 1A, 1B, 3A and 100 of the *Civil Procedure Act* and Order 45 Rule 1 of Civil Procedure Rules. The Applicants pray for the following orders: -

1. The Judgment dated 12th November 2021 and the decree issued on 2nd September 2022 be reviewed and amplified to include an order directing that the Land Registrar Kirinyaga to reinstate land parcels No. Mwerua/Kagio/2801, Mwerua/Kagio/2803, Mwerua/Kagio/3231



and Mwerua/Kagio/3232 and restore the entries showing sub-division of land parcels No. Mwerua/Kagio/715 and Mwerua/Kagio/2802.

2. Such other orders be made as are just and expedient.
2. The application is supported by six grounds on its face which are further reiterated in the Supporting Affidavit sworn by Andrew Wachira Munene, who depones that his father, John Munene Anderea, owned land parcel No. Mwerua/Kagio/715 as from 23/10/1972. The 2nd Defendant, Margaret Wangechi Karoki, owns the neighbouring land No. Mwerua/Kagio/714. The Applicant avers that John Munene subdivided his land in 2003 into parcels Mwerua/Kagio/2801, 2802, and 2803, all of which were registered under his name. He transferred parcel No. Mwerua/Kagio/2801 to Naomi Wanjiru Munene in 2003 and parcel No. Mwerua/Kagio/3232 to the same beneficiary in 2004, after further subdividing No. Mwerua/Kagio/2802. The Applicant further states that this dispute was filed in 2014, nine (9) years after John Munene Anderea's death in 2005. At the time of filing this suit, the Applicant contends that only land parcel No. Mwerua/Kagio/2803 and Mwerua/Kagio/3231 were in his late father's name. He further avers that following the Judgment that was rendered in favour of the Defendants, the Land Registrar Kirinyaga reinstated only the original land parcel No. Mwerua/Kagio/715, ignoring that it had been subdivided into land parcels Mwerua/Kagio/2801, 2802 and 2803 and that land parcel Mwerua/Kagio/2802 had been further subdivided into parcels 3231 and 3232. The Applicant prays that the titles of land parcels Mwerua/Kagio/2801, 2803, 3231 and 3232 be reinstated as they were resultant subdivisions from land parcel Mwerua/Kagio/715.
3. The application is opposed through grounds of opposition filed by the 1st Interested Party. The grounds of opposition include the following claims: the application is incompetent and legally flawed; it is incurably defective; it is frivolous, vexatious, and an abuse of the court process; and the Summons dated 15th November 2023 does not meet the legal requirements for a review of a decree and/or order.
4. Despite being served, the Plaintiff and the second Interested Party did not file any response to the application.
5. Having considered the application and the opposition by the 1st Interested Party, the Court has identified two issues for determination:
 1. Whether the application is fatally defective for being expressed as summons instead of by way of a notice of motion application for review;
 2. Whether the Applicant has made out a case to justify the grant of the orders sought.
6. On the first issue, I am of the view that an application cannot be dismissed for want of form because of the principles on the administration of Justice set out under Article 159 (2)(d) of *the Constitution* which provides that Justice should be rendered without undue regard to procedural technicalities, and Order 51 Rule 10 (2) of the Civil Procedure Rules which provides as follows:- (2. No application shall be defeated on technicality or for want of form that does not affect the substance of the application.”
7. Consequently, based on the above provisions, the objection to the application because it was expressed by way of summons instead by way of Notice of Motion is disallowed. To uphold the objection would amount to elevating procedural technicalities at the expense of doing substantive Justice.
8. The Applicant in the instant application seeks a review of the Court's Judgment dated 12th November, 2021 under Order 45 of the Civil Procedure Rules and Section 100 of the *Civil Procedure Act* on the grounds that there was a Ruling dated 10th November 2017 that reinstated land parcels Nos. Mwerua/Kagio/714 and 715 to conform with the status as of 12th November 2014 when the suit was initiated. The Applicant insists that when this suit was filed, the deceased had already subdivided land parcel



No. Mwerua/Kagio/715, and the title had been closed. Additionally, new title numbers, Mwerua/Kagio/2801, 2802, and 2803, had been opened and that land parcel 2801 had been transferred out while parcel 2802 had been further subdivided.

9. An application to correct/amend an error in the Judgment is provided for and covered under Order 45 Rule (1) and Section 100 of the Civil Procedure Rules and Act, respectively.
10. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

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

11. Section 100 of the [Civil Procedure Act](#) provides that:

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

12. In the present case, it is not disputed that the Applicant was aggrieved by this Court’s Judgment as though the Judgment was in his favour, it did not rectify the error made in the ruling dated 10th November, 2017, which reinstated Mwerua/Kagio/715, a record that did not exist at the time of filing the instant suit. This error was later repeated in the entries made in title register (green card).
13. In the Case of National Bank of Kenya Ltd –vs- Ndungu Njau [1996] KLR 469 the Court stated:-

“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.”

14. Having regard to the facts and circumstances of this matter I am satisfied there was omission on the part of the Plaintiff to ascertain the status of the suit land at the time of filing the suit which omission was perpetuated upto the conclusion of the case. The abstract of the title indicated that the title to land parcel Mwerua/Kagio/715 was closed following subdivision on 3rd September, 2003. Additionally,



the wording of the Court's order suggests that the Land Registrar was directed to reinstate title Nos. Mwerua/Kagio/714 and 715 in line with the status as of 12th November 2014, when the suit was initiated by the Plaintiff. This status should have referred to the existence of land parcels Nos. Mwerua/Kagio/714, 2801, 2803, 3231 and 3232.

15. In essence land parcel Mwerua/Kagio/715 did not exist as at the time the Plaintiff filed the present suit. The record indicates that the parcel of land was initially registered in the name of Mutugi Nguri on 14th April 1972 before it was registered in the name of John Munene Andrea on 23rd October 1972 who subsequently subdivided the same on 3rd September 2003 to create land parcels Mwerua/Kagio/2801 – 2803 whereupon the title was closed following the subdivision. Consequently on 10th November, 2017 when the Court following an application to have the cancelled titles as a result of an *ex parte* Judgment reinstated ordered *inter alia*:-
 - 1). That an order is issued directing the Land Registrar to immediately reinstate title No. Mwerua/Kagio/714 and Mwerua/Kagio/715 to conform with the status subsisting as at 12th November, 2014 when the suit was commenced by the Plaintiff, the Court inadvertently and erroneously perpetuated the error made by the Plaintiff when he sought the revocation of title No. Mwerua/Kagio/715 when such a title did not exist as it had been closed following subdivision.
16. The effect of implementing the *ex parte* Judgment with the error was effectively to cancel titles in respect of land parcels 2801,2803,3231 and 3232 which resulted from the subdivision of land parcel Mwerua/Kagio/715. Since the *ex parte* Judgment was set aside and eventually the Plaintiffs suit ordered dismissed as against the Defendants, the net effect was that the status as existed before the Plaintiff filed the suit, ought to be reverted to.
17. In the result, I find merit in the Applicant's Notice of Motion dated 15th November 2023 and I accordingly allow the same in terms of prayer (a) of the Notice of Motion.
18. As concerns the costs of the application, both the Applicant and the Respondent share the blames as either of them had the opportunity to seek clarification of the status of the land titles affected in the cause of the proceedings before the Trial Court. I order that each party bears their own costs of the application.

Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 8TH DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC - JUDGE

