



**Mikado Properties LLP v Magugu & 2 others (Sued as the administrators of the Estate of Arthur Kinyanjui Magugu - Deceased) (Environment & Land Case E044 of 2023) [2024] KEELC 6485 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6485 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E044 OF 2023  
A NYUKURI, J  
OCTOBER 2, 2024**

**BETWEEN**

**MIKADO PROPERTIES LLP ..... PLAINTIFF**

**AND**

**MARGARET WAIRIMU MAGUGU ..... 1<sup>ST</sup> DEFENDANT**

**GICHO KINYANJUI MAGUGU ..... 2<sup>ND</sup> DEFENDANT**

**MIRIAM SUSAN NJAMBI MAGUGU ..... 3<sup>RD</sup> DEFENDANT**

**SUED AS THE ADMINISTRATORS OF THE ESTATE OF ARTHUR  
KINYANJUI MAGUGU - DECEASED**

**RULING**

**Introduction**

1. Before court is the application dated 31<sup>st</sup> August 2023 filed by the plaintiff seeking the following orders;
  - a. Spent.
  - b. That this Honourable Court be pleased to review its order directing that status quo obtaining in LR Nos. 18048, 18049, and 18050 be maintained so that there is no further construction or alienation, sale or transfer of the same by all the parties herein pending the hearing and determination of this suit by removing the properties Land Reference Numbers 18049 and 18050 from the said order and rewording the order to read;

“That status quo obtaining in LR No. 18048 be maintained so that there is no further construction, or alienation, sale or transfer of the same by all the parties herein pending the hearing and determination of this suit.”



- c. That the costs of this application be in the cause.
2. The application is supported by the affidavit sworn by Bonice Misoka the plaintiff's manager. The applicant's case is that although the plaintiff in this suit sought a declaration for ownership of LR Nos. 18048, 18049 and 18050, the defendants in their responses and oral submissions indicated that they had no interests in LR Nos. 18049 and 18050. That the orders issued on 12<sup>th</sup> July 2023 affect the two parcels which are not disputed yet the applicant wishes to fence and develop the two properties. That the applicant has since amended the plaint and excluded the two properties, hence the only property in contention is LR No. 18048. That the defendants will not suffer any prejudice.
3. The defendants filed grounds of opposition on 19<sup>th</sup> October 2023 opposing the application. They stated that the applicant's claim of LR Nos. 18049 and 18050 is not supported by any documents and that the process of acquiring the same was not legitimate or procedural, which is the reason the plaintiff failed to include parties which ought to have been joined to these proceedings to cover up the illegitimacy. They also stated that if the plaintiff is found to have acquired their title fraudulently and unprocedurally, then LR Nos. 18049 and 18050 will not belong to the plaintiff. They maintained that the application should await the determination of the suit.
4. The application was disposed by way of written submissions and on record are submissions filed by the plaintiff/applicant on 15<sup>th</sup> January 2024 which the court has duly considered.

### **Analysis and determination**

5. The court has carefully considered the application, response thereto, submissions and the record. The only issue that arise for determination is whether the plaintiff deserves the orders of review.
6. Section 80 of the *Civil Procedure Act* provides the court's jurisdiction to grant orders of review. Order 45 Rule 1 of the *Civil Procedure Rules* provides for the grounds for review as follows;
  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.
7. Therefore, an applicant seeking review must demonstrate that there is new and important matter or evidence which was not within his knowledge or could not be produced by him at the time of the decree or order sought to be reviewed, even after exercise of due diligence; that there is an error apparent on the face of the record or for any other sufficient reason.
8. In the case of *Republic v Public Procurement Administrative Review Board & 2 Others* [2018] eKLR, the court held as follows;

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 ground there is a requirement that the application has to be made without unreasonable delay.

9. In this case, the applicant has not stated new evidence or error apparent on the face of the record. The only reason the plaintiff has sought for review is that the defendants in their responses and oral submissions in court indicated that they did not have any interest in LR No. 18049 and LR 18050. The plaintiff has not specified or attached the response of the defendants where they indicated that they have no interest in LR Nos 18049 and 18050. It is apparent that the three titles may have resulted from one parcel.
10. The orders sought to be reviewed were issued on 12<sup>th</sup> July 2023, when the plaintiff indicated that there was need to amend the plaint and join other parties including the Director of Survey, Chief Land Registrar and Multirural Ltd who allegedly sold the three properties to the plaintiff. The plaintiff did not join the said parties in the amended plaint, an act which is within its discretion. However, the defendants have raised contention on the legitimacy of the ownership of the three suit properties by the entity that sold the three properties to the plaintiff. As at now, this matter has not been heard and there is no clarity on the legality of acquisition of the three properties herein and whether the alleged previous owner ought to be joined, or whether there are parties the plaintiff has not joined to the suit to cover up the legality of acquisition as argued by the defendant.
11. In the premises, I find and hold that the applicant has not met conditions for review under Order 45 Rule 1 of the *Civil Procedure Rules*. Therefore, I find and hold that the application dated August 31, 2023 lacks merit and the same is hereby dismissed with costs to the respondent.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 2ND DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of:-

Mr. Ooko for plaintiff/applicant

Mr. Mutinda for defendants

Court assistant – Josephine

