



Nkoitiko (Suing as the Administrator of the Estate of Mutai Ene Nkoitiko - Deceased) v Mangori & 2 others (Civil Suit 530 of 2017) [2024] KEELC 7583 (KLR) (16 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7583 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
CIVIL SUIT 530 OF 2017
MN GICHERU, J
OCTOBER 16, 2024**

BETWEEN

HELEN NYOTE NKOITIKO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF MUTAI ENE NKOITIKO - DECEASED) APPLICANT

AND

**KIMANKUSI OLE SETOYA MANGORI 1ST RESPONDENT
DISTRICT LANDS REGISTRAR, KAJIADO 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. This ruling is on the notice of motion dated 1/11/2023. The motion which is by the plaintiff is brought under Order 22 rule 22, Order 8 rule 3, Order 45 rules 1 and 2 Civil Procedure Rules and Sections 3, 3A, 63 (e) and 80 (n) of the *Civil Procedure Act*.
2. The motion seeks the following orders.
 2. Stay of execution of the judgment and decree delivered on 4/10/2023.
 3. Review and setting aside of the judgment and decree herein.
 4. Leave to the plaintiff to call the Land Registrar.
 5. Costs of this application be provided for.
3. The motion is based on eight (8) grounds and is supported by an affidavit sworn by the plaintiff dated 1/7/2023 which has two annexures which are a copy of the judgment, decree and a report by the land registrar. The gist of the above material is as follows. Firstly, the plaintiff's suit was dismissed on 4/10/2023. Secondly, on 26/10/2023, the plaintiff perused succession cause No. 62/2016 and it dawned on her that the 1st and 2nd defendants did not have valid reasons to transfer L.R No. Kajiado/



Kiputiei/949 to L.R. No. Kajiado/Kaputiei-Central/1825 and 1826 without letters of administration and the said transfer was tainted with illegality. Thirdly, when the 1st defendant testified in court on 7/12/2021 this information was within his knowledge. Fourthly, it is in bad faith for the 1st defendant to use the courts to sanctify an illegality. Finally, it is illegal to sell or buy land without letters of administration, which renders the contract a nullity ab initio.

For the above and other reasons, the motion dated 1/11/2023 should be allowed.

4. The motion is unopposed because the 1st defendant's counsel did not file any replying affidavit or grounds of opposition. He did not file any written submissions either and the only submissions on record are those filed by the plaintiff's counsel dated 9/5/2024.
5. I have carefully considered the motion dated 1/11/2023 in its entirety including the grounds, the affidavit in support, the annexures, the submissions and the law cited therein. Before an application for review can be allowed under Order 45 rule 1 can be allowed, the applicant must prove the following.
 - a. That there is no pending appeal from the decree or order sought to be reviewed.
 - b. That he/she has discovered a new and important matter or evidence which was not within his/her knowledge at the time of passing the decree or order or'
 - c. That there is some mistake or error apparent on the face of the record or
 - d. That there is another sufficient reason.
6. Looking at the motion herein, the applicant is saying that she perused Succession Cause No. 62 of 2016 and discovered that the 1st and 2nd defendants did not have valid reasons to transfer (sic) L.R. No. 949 to L.R. No. 1825 and 1826 (I suppose she means subdivide) without letters of administration. She has not said why the 1st defendant could not subdivide the suit land which was in his name. The issue at the trial was whether the plaintiff, in whose name the suit land was registered at the time she sold it to the 1st defendant required letters of administration to transfer the land. The court found that such letters were not necessary. This is because the land which had been transferred to the by her mother who was deceased, was not in the name of her mother. In the current application, the plaintiff has not shown that there is anything new. She is raising the same issue again without showing discovery of any new and important matter on her part. The discovery mentioned in Order 45 is discovery by the applicant not by the respondent.
7. An error apparent on the face of the record has been described as one that stares at the court in the face. I see no such error staring at me and the applicant has not pointed one out to me.
8. In summary, there is nothing that the applicant has proved that meets the threshold in Order 45 rule 1 Civil Procedure Rules.

For the above stated reasons, I find no merit in the motion dated 1/11/2023 and I dismiss it with costs to the respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

