



REPUBLIC OF KENYA



Ndundu & 2 others v Embakasi Ranching Company & 5 others (Environment & Land Case 281 of 2012) [2024] KEELC 6657 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6657 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 281 OF 2012
LN MBUGUA & LN MBUGUA, JJ
OCTOBER 3, 2024**

BETWEEN

**STEPHEN KIMANI NDUNDU 1ST PLAINTIFF
SAMUEL NDUNDU KIMANI 2ND PLAINTIFF
MARY NYAMBURA NDUNDU 3RD PLAINTIFF**

AND

**EMBAKASI RANCHING COMPANY 1ST DEFENDANT
TERESIAH WAMBUI NJOROGE 2ND DEFENDANT
MAINA NDEGWA 3RD DEFENDANT
WANGURURO MBUGUA 4TH DEFENDANT
GERALD KARIMI 5TH DEFENDANT
LAND REGISTRAR NAIROBI 6TH DEFENDANT**

RULING

1. Judgment was delivered herein on 8.6.2023 of which the 1st Plaintiff was declared the owner of Plot C20 while the 2nd Plaintiff was declared owner of Plot C24. The Plaintiffs' claim over Plot No. C21 and C23 was dismissed.
2. Subsequently, the Plaintiffs filed the Notice of Motion application dated 20.6.2023 seeking a review of the said judgement as well as orders that costs be borne by the Respondents. The application is premised on grounds on its face and on the supporting affidavit sworn on 20.6.2023 by Luke Omondi, counsel on record for the Plaintiffs. He contends that the court did not consider Plaintiffs' submissions, thus the court made findings which are adverse to the Plaintiffs in the judgment. Adding that failure



to consider the said submissions is an error apparent on the face of the record warranting review of the judgment.

3. The application is not opposed. The Plaintiff filed submissions dated 31.5.2024 to buttress the averments set out in the application, arguing that the court has jurisdiction to review its judgment to correct errors pursuant to Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. It is argued that the said submissions that were not considered demonstrate a clear and reasonable link between the Plaintiffs' list and supplementary list of documents and the respective plot numbers. It is argued that if the said submissions were considered, they would have guided the Court to recognize the Plaintiffs' ownership of Plot No's C21 and C23.
4. The case of *National Bank of Kenya Ltd v Ndungu Njau* [1997] eKLR as well as *Jeremiah Chelanga (Suing as the Guardian ad Litem of John Chelanga Chepkonga) v Board of Management Kamatony Primary School & 3 others* [2021] eKLR are relied upon.
5. The Plaintiffs argue that they believe that their written submissions address several aspects raised by the court in its judgment and on that basis, there is an error apparent on the face of the record.
6. This court's power to review its own judgment is provided for within the framework of Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The framework is reiterated by the court of appeal in *Sanitam Services (E.A.) Limited v Rentokil (K) Limited & Another* (2019) eKLR.
7. Courts have established that where a review is based on an error apparent on the face of the record, the error must be self-evident. In *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR the Court stated that;

“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”.
8. The records indicates that on 19.4.2023, this court gave directions for the Plaintiff to file submissions by 10.5.2023 but there was no compliance with the said order as the Court Tracking System (CTS) indicates that submissions were filed on 19.5.2023. Thus the alleged omission cannot be said to be an error apparent on the face of the record.
9. In any case submissions remain persuasive arguments which cannot take the place of evidence, See- *Sea Star Malindi Limited v County Government of Kilifi (Environment & Land Case 47 of 2006)* [2023] KEELC 20329 (KLR) (4 October 2023) (Judgment)
10. In the circumstances, I find that the application dated 20.6.2023 is not merited, the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ongwen for plaintiff

Court assistant: Joan

AMENDED AND SIGNED IN NAIROBI THIS 3RD DAY OF OCTOBER, 2024



LUCY N. MBUGUA
JUDGE

