



**Abeid v Abdulhussein (Enviromental and Land Originating Summons  
31 of 2022) [2024] KEELC 7344 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7344 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 31 OF 2022  
FM NJOROGE, J  
NOVEMBER 6, 2024**

**BETWEEN**

**SALIM ISLAM ABEID ..... APPLICANT**

**AND**

**IMRANALI CHANDABHAI ABDULHUSSEIN ..... RESPONDENT**

**RULING**

1. The application for determination is dated 24/6/2024 for orders that: -
  1. Spent.
  2. This honourable court be pleased to review and/or vary its judgment that was delivered by Honourable Lady Justice M.A Odeny on 17/10/2023 and further orders of justice Francis Njoroge issued on 12/6/2024 by ordering that the anomaly on the originating summons dated 11/5/2022 be corrected and there be a replacement of the Kilifi Registrar of Titles with that of Mombasa Registrar of Titles and further the order as framed on the Originating Summons dated 11/5/2022, the registrar of titles, Mombasa County to delete entries in favour of the Respondent in respects to LR No. MN/III/2483 being plot no. MN/III/2483 whose title is registered in Mombasa County as per Order No.5.
  3. his honourable court be pleased to make such further orders as are necessary for the ends of justice to be met.
  4. The costs of the application be provided for.
2. The application which was brought under Article 50 and 159 of the *Constitution*; Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*; and Order 45 rules 1, 2, 3, 5 and 6, Order 22 and Order 51 rule 1 of the *Civil Procedure Rules*, was supported by the Applicant's affidavit sworn on 24/6/2024. The grounds in support of the application were that the Applicant has been unable to execute judgment delivered by



this court on 17/10/2023 for reasons that the orders sought in the main suit, the originating summons dated 11/5/2022, were directed to the Registrar of Titles, Kilifi as opposed to the Registrar of Titles, Mombasa where the suit property LR No. MN/III/2483 is registered.

3. The Applicant asserted that his advocate erroneously failed to disclose within the originating summons and previous application for review dated 13/3/2024, that while the suit property is physically located in Kilifi its registration was before the Mombasa Registrar of Titles. The Applicant now wants the alleged discrepancy rectified in the originating summons, to reflect the true position. He asserted that no prejudice will be occasioned should the application be granted.
4. The application is unopposed. However, it must be noted that the Applicant filed a somewhat similar application dated 13/3/2024 wherein the substantive prayer was framed as follows:
  - b. "that honourable court be pleased to review and/or vary its ruling (sic) that was delivered by Honourable Lady Justice M.A. Odeny on 17/10/2023 by ordering the registrar of titles Mombasa County to delete entries in favour of the respondent in respects of LR No. MN/III/2483 being Plot No. MN/III/2483 whose title is registered in Mombasa County."
5. In the ruling delivered on 12/6/2024, I noted under paragraph 3 and 7, and which my view still remains, the exact grievance of the Applicant is to amend the originating summons.
6. The Applicant wants this court to review the ruling delivered on 12/6/2024 and judgment dated 17/10/2023. Firstly, I will not delve into the latter since doing so will be acting contrary to the principles of *res-judicata*, having addressed that issue in the said ruling.
7. In relation to review of the ruling dated 12/6/2024, the court is essentially being implored to amend a pleading albeit through an application for review which is not proper. I say so because on the one hand, the principles in deciding whether or not a court will review its decision, and on the other hand whether or not it will allow an application for amendment of a pleading are different, not to be applied interchangeably.
8. In light of the above, I decline to grant the orders sought and I hereby dismiss the motion dated 24/6/2024 with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

