



**Chirchir v Rono (Environment & Land Case 79 of 2018)
[2023] KEELC 575 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 575 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 79 OF 2018
MC OUNDO, J
FEBRUARY 9, 2023**

BETWEEN

JULIUS CHERUIYOT CHIRCHIR PLAINTIFF

AND

DAVID KIPKEMOI RONO DEFENDANT

RULING

1. Pursuant to the striking out of the suit herein via the court's ruling of the 14th July 2022 for reason that the Respondent in this matter lacked the requisite locus standi to be sued, the Applicant has now filed the present application dated the 20th July 2022 pursuant to the provisions of Order 51 Rule 1 and Order 45 Rule 1 of the *Civil Procedure Rules* 2010, Section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law wherein he has sought that the court reviews and/or sets aside its ruling and orders issued 14th July 2022 and instead orders that the parties maintain the status quo pending, hearing and determination of his application(sic).
2. The Application is supported by the sworn affidavit of Julius Cheruiyot Chirchir the Applicant herein as well as the grounds filed in support thereof dated the 20th July 2022.
3. The application was opposed by the Respondent's Grounds of Opposition dated the 7th November 2022 to the effect that the Ruling dated 14th July 2022 which is the subject of this application was based on Law (locus standi) hence the application failed to address the issue of locus standi and was only dealing with matters of facts supporting lack of locus standi on the part of the Respondent. That the application for review thus did not meet the threshold for review as is stipulated under Order 45 Rule 1 Civil Procedure Rules.
4. That the matters raised in the application were matters which ought to have been raised in an Appeal. The said application thus lacked merit and ought to be dismissed with costs.



5. Parties took directions to have the Application disposed of through written submissions to which the Applicant framed his issues for determination as follows;
 - i. Whether there is a basis for the court to exercise its discretionary power to set aside the order of 14th July 2022 and reinstate the suit.
 - ii. Whether the Plaintiff will suffer irreparable loss and damage if the sought order is not granted
 - iii. Will setting aside be prejudicial to the Defendant?
6. On the first issue for determination, the Applicant submitted that the original owner of LR. Kericho/ Kipsonoi/1848 died on 30th January, 2004 as per the certificate of death annexed as “JCC 3” whereas the Defendant transferred the suit to himself on 8th November, 2006 and subsequently sub-divided it into several portions on 27th March 2018, without the process of succession in regard to the estate of Kiprono A. Ngeno. That upon the Plaintiff making inquiries at the Bomet Land Office and with the Deputy County Commissioner Sotik Sub-county, it had been realized that the sub-division of the suit land by the Defendant did not reflect in their records.
7. That it was evident that the Defendant had transferred the suit property into his name without due process being followed thus disadvantaging the Plaintiff who had bought a portion of 1 acre from the original owner. That were the Plaintiff’s suit not reinstated, the Defendant’s illegal actions would go free (sic).
8. On the second issue for determination, the Applicant submitted that the Ruling delivered on 14th July, 2022 was based on the Defendant’s application alone/ex-parte and the same should be reviewed and varied in the interest of justice and the suit be reinstated and heard on merit. That the Originating Summons dated 16th November, 2018 was never considered hence the Plaintiff was never considered and was thus condemned unheard against the cardinal rule of natural justice.
9. That the Ruling of 14th July 2022 had dismissed (Sic) the Plaintiff’s suit on account of the apparent errors on the face of the court record (sic). The Plaintiff was a beneficiary to the estate of Kiprono Ngeno (Deceased) who was the registered owner of the suit land wherein the Defendant had transferred and sub-divided the whole land and obtained the Title Deed illegally and without any color of right. This fact was not considered by the Court and which evidence was fundamental in this case.
10. The ruling made by the Honorable Court was based on the property LR No. Kericho /Kipsonoi /1848 wherein it had reasoned that it was in the name of the late Kiprono Ngeno (Deceased) yet the suit property in court record is registered in the name of the Defendant as per annexure “JCC2” in the Supporting Affidavit.
11. That if a review on the ruling of 14th July, 2022 was not made and in its place there be an order that parties maintain the status quo pending hearing and determination of this application, (sic) the Applicant would suffer irreparable loss and damage which could not be compensated by monetary(sic)
12. That the setting aside of the ruling would not be prejudicial to the Respondent. That the application was brought without inordinate delay. That for the administration of justice, the suit be reinstated for hearing on its merits for the interest of justice for all the parties. Reliance was placed on the decisions in Nairobi High Court Succession Cause No. 3264 of 2014 *Jacob Gichubi Wag’ang’a vs Hannah Wanjiru wag’ang’a* and Nairobi High Court ELC No. 177 of 2017 *Goldlida Limited vs NIC Bank Limited*.
13. In opposition, to the application, the Respondent framed his issues for determination as follows;



- i. Whether or not the failure to annex a ruling or order in the application for review as per the provision of O. 45(1) CPR renders the application defective.
 - ii. Whether or not the application meets the threshold for granting review under O. 45 r 1 CPR.
 - iii. Who is to pay costs?
14. The Respondent relied on the provisions of Order 45 Rule 1 of the Civil Procedure Rules to submit that the ruling annexed by the Applicant in the application was not an Order or decree as envisaged in Order 45 Rule 1 of the Civil Procedure Rules. That it was incumbent to extract the Order or decree which he felt aggrieved him because without such an Order/decree, the ruling or Judgment could not be reviewed. Reliance was placed on the holding in Nairobi High Court Civil case (sic) Uhuru Highway Development Limited vs Central Bank of Kenya & Another.
15. On the second issue for determination, the Respondent relied on the decision by the Court of Appeal in the case of Tokesi Mambilia & Others vs Simion Litsanga Civil Appeal No. 90 of 2001 to submit that the application herein was based on 15 grounds (as shown on its face) and an affidavit wherein the Applicant had not demonstrated at all whether those grounds fit into the 3 classical ingredients of review as set out in Order 45 Rule 1 of Civil Procedure Rules which were:
- i. Discovery of new and important matter or evidence which was not in his knowledge or he could not produce
 - ii. Mistake or error apparent on the face of the record
 - iii. Or any other sufficient reason.
16. That the Applicant had failed to address the issue on the locus standi which was a pure point of law and therefore had not dislodged the ground for review. That the application lacked merit and should be dismissed with costs.

Determination

17. Order 45 Rule 1 of the Civil Procedure Rules provides as follows:-
- 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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”
18. Section 80 of the *Civil Procedure Act* provides as follows:-
- Any person who considers himself aggrieved-
- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- (b) by a decree or order from which no appeal is allowed by this Act, May apply for a review of judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
19. From the above provisions, it is clear that whereas Section 80 of the Civil Procedure Act gives the court the power to review its orders, Order 45 Rule 1 of the Civil Procedure Rules sets out the rules which restrict the grounds upon which an application for review may be made. These grounds include;
- i. 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;
 - ii. on account of some mistake or error apparent on the face of the record, or
 - iii. for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.
20. The main grounds for review are therefore; discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.
21. Indeed in the case of National Bank of Kenya Limited v Ndungu Njau (1997) eKLR the Court of Appeal Court had held 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. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter”.
22. It is not to be lost that the impugned order which the Applicant seeks to review was contained in court’s ruling of the 14th July 2022 wherein the Court had found that the Respondent in this matter lacked the requisite locus standi to be sued and the Applicant’s suit was struck out.
23. The Applicant’s complaint herein is based on a host of grievances just to but to mention a few;
- i. That the Ruling of 14th July 2022 had dismissed his suit on account of the apparent errors on the face of the court record.
 - ii. That the Applicant was a beneficiary to the estate of Kiprono Ngeno (Deceased) who was the registered owner of the suit land wherein the Respondent had transferred and sub-divided the whole land and obtained the Title Deed illegally and without any color of right which fact had not been considered by the Court and which evidence was fundamental in this case.
 - iii. That the ruling made by the Honorable Court was based on the property LR No. Kericho / Kipsonoi /1848 wherein it had reasoned that it was in the name of the late Kiprono Ngeno (Deceased) yet the suit property in the court record is registered in the name of the Defendant as per annexure “JCC2” in the Supporting Affidavit.
24. In my humble opinion, the Applicant did not address the three ingredients as provided for under Order 45 Rule 1 of the Civil Procedure Rules so as to persuade the court to review its decision. Indeed nothing had been addressed on the Respondent’s lack of locus standi which had removed the court’s jurisdiction from hearing the suit.



25. The court is bound by the pleadings of the parties. The duty of the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings.
26. In the present scenario, the Applicant did not allude to 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 order was made or on account of some mistake or error apparent on the face of the record, confirming that indeed the Respondent had the locus standi to be sued in this matter.
27. Having looked at the reasons herein advanced by the Plaintiff/Applicant whilst seeking that this court reviews its order of 14th July, 2022, the same do not meet the threshold as set out under Order 45 Rule 1 of the Civil Procedure Rules and thus this is not a proper case for the court to exercise its discretion in favour of the Plaintiff/Applicant. Accordingly, I proceed to dismiss the application dated 12th July 2022 with costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT KERICHO THIS 9TH DAY OF FEBRUARY 2023.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

