



REPUBLIC OF KENYA



Gichuhi & another v Njoroge & 3 others (Environment & Land Case 768 of 2017) [2023] KEELC 16744 (KLR) (8 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 768 OF 2017**

**BM EBOSO, J
MARCH 8, 2023**

BETWEEN

DAVID JOSEPH GICHAMBA GICHUHI 1ST PLAINTIFF

BEATRICE WANJIRU GICHAMBA 2ND PLAINTIFF

AND

JANE WACHEKE NJOROGE 1ST DEFENDANT

JOSEPH NDUNGU KAMAU 2ND DEFENDANT

LAND REGISTRAR-THIKA 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This court [Gacheru, J] rendered a Judgment in this suit on January 27, 2022. The court identified the following as the five key issues that fell for determination in the suit:
 - (i) Who were the bonafide owners of the suit property;
 - (ii) Whether the plaintiffs were the bonafide purchasers for value of the suit property without notice;
 - (iii) Whether the plaintiffs were entitled to the orders sought in the primary suit;
 - (iv) Whether the 1st defendant was entitled to the orders sought in their counterclaim; and
 - (iv) Who was to bear costs of the suit.
2. The court made the following findings on the above issues:
 - (i) the 1st defendant was the bonafide owner of the suit property;



- (ii) the plaintiffs were bonafide purchasers of the suit property for value without notice of fraud that had been perpetrated by Joseph Ndungu Kamau;
 - (iii) the plaintiffs were entitled to an award of compensation for the loss suffered assessed at Kshs 15,000,000 against the 3rd and 4th defendants together with an order for refund of the purchase price of Kshs 2,000,000 against the 2nd defendant;
 - (iv) the 1st defendant was entitled to prayers (b), (c), (d), (e), and (f) in the counterclaim dated 18/3/2015;
 - (v) the 2nd, 3rd and 4th defendants were to bear the plaintiffs' costs of the suit; and
 - (vi) the 2nd, 3rd and 4th defendants were to bear the costs of the counterclaimant.
3. The court entered judgment in the following *verbatim* terms:

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- “a) The Plaintiffs are entitled to refund of the purchase price of Ksh. 2,000,000/= by the 2nd Defendant with interest at the Court's rate from the date of this suit to payment in full.
- b) The Plaintiffs are entitled to compensation of Ksh. 15,000,000/= by the 2nd, 3rd and 4th Defendants being the market value of the suit property.
- c) The Plaintiffs are also entitled to costs of this suit to be paid by the 2nd, 3rd and 4th Defendants respectively.

Further, the court enters judgement for the counterclaimant as prayed in the counterclaim dated March 18, 2015, in the following terms; -

- a) A mandatory injunction to issue compelling the Land Registrar to issue to the Counterclaimant with an abstract of the title to the suit property Ruiru East Block 1/1661.
- b) A permanent injunction restraining the 2nd and 3rd Defendants to the Counterclaimant from in anyway selling alienating transferring or in any way disposing of the property known as Ruiru East Block 1/1661 or interfering with the Counterclaimant's possession thereof.
- c) A declaration that the Counterclaimant is the rightful owner of the property known as Ruiru East Block 1/1661.
- d) A declaration that the title deeds dated 8th May 2002, issued by the Land Registrar - Thika to the 1st Defendant to the Counterclaim and 7th June, 2010 issued by the Land Registrar, Thika to the 2nd and 3rd Defendants to the Counterclaim in respect of the property known Ruiru East Block 1/1661 are illegal null and void ab initio.
- e) An order be issued to rectify the Register in respect of the property known as Ruiru East Block 1/1661, by cancelling the title deeds dated May 8, 2002 and June 7, 2010, issued by the Land Registrar, Thika to the 1st Defendant to the Counterclaim and the 2nd and 3rd Defendants to the counterclaim respectively by expurgating the entries in respect thereof from the proprietorship section of the property.



The Counterclaimant is also entitled to costs of the Counterclaim to be borne by the 2nd, 3rd and 4th Defendants respectively.

4. About 11 months later, the plaintiffs brought an application dated December 16, 2022, seeking a review of the Judgment of Gacheru, J rendered on 27/1/2022. They sought an award of interest on the compensation sum of Kshs 15,000,000 at court rate from the date of filing this suit. The said application is the subject of this ruling.
5. The application was supported by the 1st plaintiff's affidavit sworn on December 15, 2022, in which he deposed that the court awarded them Kshs 15,000,000 as compensation for loss of the suit property. It was his contention that the court awarded Kshs 2,000,000 with interest at court rate with effect from the date of filing the suit but did not award interest in respect of Kshs 15,000,000. He deposed that failure to award interest in respect of Kshs 15,000,000 was an omission because the same court had awarded interest on the award of Kshs 2,000,000.
6. The application was canvassed orally in the virtual court. Mr Kinyanjui, counsel for the plaintiffs, submitted that the plaintiffs sought to be awarded interest on damages of Kshs 15,000,000 for loss of the land. It was counsel's submission that the review was sought in relation to interest only. Counsel further submitted that review jurisdiction is exercisable for "any other sufficient reason". Counsel argued that the omission by the court to award interest was a sufficient reason within the framework in order 45 rule 1 of the Civil Procedure Rules. Counsel added that omission to award interest prejudiced the decree-holders because the judgment debtors saw no need to settle the award promptly.
7. Mr Wanjohi, counsel for the 1st defendant, submitted that omission to award interest and the likely prejudice that the decree-holders were exposed to as a result of the judgment debtor's refusal to promptly satisfy the decree constituted sufficient reason to warrant a review of the judgment.
8. I have considered the application together with the submissions tendered. I have also considered the relevant legal framework and jurisprudence. The application for review is unopposed. The single question for determination in the application is whether the application meets the criteria upon which a court exercises jurisdiction to review its judgments.
9. This court's jurisdiction to review its judgments is regulated by the framework in section 80 of the [Civil Procedure Act](#) and order 45 rule (1) of the [Civil Procedure Rules](#). 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 judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
10. Order 45 rule 1 of the [Civil Procedure Rules](#) provides as follows:

“ 1(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.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

11. Jurisdiction to grant interest is discretionary and exercise of the discretion is guided by the framework in section 26 of the [Civil Procedure Act](#) which provides as follows:

- 1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
- 2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

12. It is clear from the above framework that the court has discretion to award and fix the rate of interest to cover the following periods:

- (i) the period from the date when the suit is filed to the date when the court renders its judgment;
- (ii) the period prior to the institution of the suit; and
- (iii) the period from the date of judgment to the date of payment of the sum adjudged due or such earlier date as the court may in its discretion fix.

12. The applicants contend that the court’s omission to award interest on the sum of Kshs 15,000,000 was an inadvertency and constitutes a sufficient reason within the meaning of Order 45 rule 1 of the Civil Procedure Rules. It is their case that the general principle of law in relation to damages is that damages attract interest at court rate to cushion the decree-holder against loss arising from inflationary trends. They further contend that the judgment debtors have not paid the decretal sum, hence they [the decree holders] are prejudiced by the court’s omission to award interest.

14. The sum of Kshs 15,000,000 was the current market value of the suit property. Secondly, the purpose of the award of compensation is to put the aggrieved party in the same position as he would have been were it not for the unlawful conduct of the liable party. Considering the foregoing, the court agrees



with the applicants that non-inclusion of interest on the awarded compensation was an inadvertent omission which constitutes a sufficient reason for review of the Judgment.

15. The applicants urged the court to review the judgment by awarding them interest on Kshs 15,000,000 from the date of filing this suit. I do not agree with the applicants on the period for which interest should be reckoned. The compensation sum of Kshs 15,000,000 reflected the market value of the suit property as at the time of rendering the Judgment. It did not reflect the market value of the suit property as at the date of filing this suit. The suit was filed in 2017. To properly indemnify the plaintiffs and place them where they would have been had they not lost the title, the award should attract interest at court rate from the date of Judgment.
16. In the end, in the absence of any opposition to the application for review, the court finds that the applicants have satisfied the criteria for review of a judgment. Consequently, the Judgment dated 27/1/2022 is reviewed as follows:
 - a. Disposal order number (b) in the Judgment dated 27/1/2022 is reviewed to read as follows:

“The plaintiffs are entitled to compensation of Kshs 15,000,000/= by the 2nd, 3rd, and 4th defendants being the market value of the suit property, and the said award of Kshs 15,000,000 shall attract interest at court rate from the date of this Judgment, that is, 27/1/2022.”

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 8TH DAY OF MARCH, 2023

BM EBOSO

JUDGE

In the Presence of: -

Mr Kinyanjui holding brief for Mr Gikandi for the Plaintiffs/Applicant

Court Assistant: Ms Osodo

