



Warab Limited v Machakos County Government & 9 others (Environment & Land Case 220 of 2008) [2023] KEELC 16091 (KLR) (15 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16091 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 220 OF 2008**

CA OCHIENG, J

MARCH 15, 2023

BETWEEN

WARAB LIMITED PLAINTIFF

AND

MACHAKOS COUNTY GOVERNMENT 1ST DEFENDANT

JOSEPH KIOKO 2ND DEFENDANT

HARRISON MUSYA MUSAU 3RD DEFENDANT

FLORENCE KAMENE 4TH DEFENDANT

NATIONAL LAND COMMISSION 5TH DEFENDANT

ANTHONY MUTUA 6TH DEFENDANT

DAVID KAVOO 7TH DEFENDANT

PETER MUMO MAINGI 8TH DEFENDANT

MUSEMBI NZIOKA 9TH DEFENDANT

BENJAMIN SEVE 10TH DEFENDANT

RULING

1 What is before Court for determination is the Defendants’ Notice of Motion Application dated the March 29, 2022 where they seek the following orders:

1. That the Honourable Court do review its Judgment made on May 8, 2020, specifically paragraphs 24 and 40 of its Judgment, to include the correct survey Plan number F/R No 210/124 as per the evidence adduced in court.



2. That costs for this Application be provided for.
- 2 The Application is premised on the grounds on the face of it and the Supporting Affidavit of Peter Mumo Maingi, the 8th Defendant herein, where he avers that he has authority of the other Defendants to swear the said Affidavit. He deposes that vide the Judgment of this Court dated the May 8, 2020 which was entered in their favour, the Plaintiff's case was dismissed. He explains that upon careful perusal of the said Judgment, they discovered an error apparent on the face of it hence requiring review. Further, the error was on page 8 paragraph 24 and page 12 paragraph 40 in that the wrong F/R number has been quoted in the said Judgment, to wit: the court quoted F/R No 220/173 instead of F/R No 210/124, which is the correct one. He contends that the Application has been made without unreasonable delay. He reiterates that the Plaintiff will not be prejudiced whatsoever if the Application is allowed.
- 3 The Plaintiff though duly served failed to file a response to oppose the instant Application.

Analysis and Determination

- 4 Upon consideration of the instant Application including The Supporting Affidavit, the impugned Judgment, court proceedings and pleadings, the only issue for determination is whether the said Judgment should be reviewed as sought.
- 5 On review, Section 80 of the *Civil Procedure Act* provides:-

"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."
- 6 While, Order 45, Rule 1(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 a review of judgment to the court which passed the decree or made the order without unreasonable delay."
- 7 In the case of *National Bank of Kenya Ltd v Ndungu Njau* (Civil Appeal No 211 of 1996) the Court of Appeal held as follows in relation to review:-

"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 require no 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. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review."*



- 8 In the current scenario, I note at page 8, paragraph 24 and page 12 paragraph 40 the Court made reference to F/R number 220/173 yet in the rest of the Judgment it refers to F/R number 210/124. Further, in the Defendants' submissions including some of the exhibits it also refers to F/R number 210/124. To my mind, since this Application is not opposed with the Applicants' averments remaining uncontroverted, I find that there was indeed an error apparent on the face of record where the wrong F/R number has been quoted in the said Judgment, to wit: the court quoted F/R No 220/173 instead of F/R No 210/124 in paragraphs 24 and 40 of the said Judgment. The alleged error apparent on the face of record is self-evident as it requires no argument to establish it and I find that it is hence necessary to correct it. Based on the facts before me while relying on the legal provisions cited above as well as associating myself with the aforementioned decision, I find the review warranted.
- 9 In the circumstances, I find the Application dated the March 29, 2022 merited and will allow it.
Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 15TH DAY OF MARCH, 2023

CHRISTINE OCHIENG

JUDGE

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