



**Gicheru v Ngure & another (Environment and Land Appeal  
E048 of 2023) [2023] KEELC 20550 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20550 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E048 OF 2023  
EK WABWOTO, J  
OCTOBER 5, 2023**

**BETWEEN**

**HARRISON BISMARCK NDORIA GICHERU ..... APPELLANT**

**AND**

**FRANCIS GITAU NGURE ..... 1<sup>ST</sup> RESPONDENT**

**AGRICULTURAL FINANCE CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to two Notice of Motion applications dated 17<sup>th</sup> May 2023 and 16<sup>th</sup> June 2023. The Appellant's application's dated 17<sup>th</sup> May 2023 was partially dispensed with on 15<sup>th</sup> June 2023 in the presence of counsel for the Appellant and Respondents with interim orders granted against the 1<sup>st</sup> Respondent from interfering with Appellant's possession of the suit property known as LR Limuru/Rironi/57. The Court also directed that the other pending issues be canvassed by way of written submissions.
2. Dissatisfied with the orders of the Court, the 1<sup>st</sup> Respondent moved the Court vide Notice of Motion dated 16<sup>th</sup> June 2023 which was accompanied by a supporting affidavit of Francis Gitau Ngure. The 1<sup>st</sup> Respondent sought orders that:
  - i. Spent.
  - ii. This Honourable Court be pleased to review and/or set aside the Ruling delivered on 15<sup>th</sup> June 2023 by Honourable Justice E.K. Wabwoto.
  - iii. An order for stay of execution of the ruling delivered on the 15<sup>th</sup> June 2023 be granted pending the hearing and determination of this application.
  - iv. Costs of this application be provided for.



3. The 1<sup>st</sup> Respondent relied on six main grounds:
  - i. That there is an error apparent on the face of the record since the Applicant is not in possession of the suit property and he has, through his agents, gone to the said property to evict the occupants.
  - ii. The Honourable Court allowed prayer no 2 of the application dated 17<sup>th</sup> May 2023.
  - iii. The plaintiff is misleading the court as he is not in possession of the suit property
  - iv. In fact, the 1<sup>st</sup> respondent herein is in possession of the suit property and has leased the same to his tenants
  - v. The application is brought before the Court without undue delay.
  - vi. It is in the interest of justice that this Honourable Court review/vary the ruling given on 15<sup>th</sup> June 2023 accordingly.
4. The Appellant filed submissions dated 13<sup>th</sup> July 2023 in opposition to the 1<sup>st</sup> Respondent's application. The Appellant sought to have the application dismissed on four main grounds. Firstly, that the orders granted were to last until 19<sup>th</sup> July 2023, therefore there were no orders to set aside as they had been overtaken by events. Secondly, there was no error apparent on the face of the record that warranted application of Order 45 of the *Civil Procedure Rules*. Third, the orders of 15<sup>th</sup> June 2023 were granted after interpartes and as such the Court is functus officio. Lastly, the 1<sup>st</sup> Respondent had shown intention of selling and disposing before the appeal which would defeat the appellant's rights and interests.
5. The 1<sup>st</sup> Respondent filed submissions dated 18<sup>th</sup> July 2023 and a supplementary affidavit sworn on 26<sup>th</sup> July 2023 by Francis Gitau Ngure in which it was reiterated that the Appellant admitted to not residing on the land. The 1<sup>st</sup> Respondent averred that the letter by the Chief of Rironi Location (marked FGN 2) confirmed that the 1<sup>st</sup> Respondent was known in the area as having possession of the suit property.
6. Having considered the applications and parties' submissions, it is clear that the issue for determination before this Court is whether the applications dated 17<sup>th</sup> May 2023 and 16<sup>th</sup> June 2023 are merited?
7. 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.
8. Additionally, 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 judgement to the court which passed the decree or made the order without unreasonable delay.

9. Rule 3(2) of the same Order provides that:

Where the court is of the opinion that the application for review should be granted, it shall grant the same:

Provided that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made without strict proof of such allegation.

10. In determining the merits of both applications, I have chosen to apply test of reasonableness. The questions lies in whether the 1<sup>st</sup> Respondent has presented sufficient reasons of possession of the suit property that would in turn make a case for setting aside or staying the orders given on 15<sup>th</sup> June 2023. In *Michael Mungai v Ford Kenya Elections & Nominations Board & Others & 2 others* [2013] eKLR, the five judge bench discussed the grounds of “sufficient reason” as follows:

“A decree or order may also be reviewed for any sufficient reason. In our opinion, sufficient reason can only be deduced from the facts and circumstances of a particular case before the court. For example, in the case of *Ngororo v Ndutha & Another* [1994] KLR 402 the Court of Appeal held that any person, though not party to a suit, whose direct interest is affected by a judgement is entitled to apply for review. Such a reason can be ‘sufficient reason’ for the purposes of Order 45 Rule 1(1) for reviewing a decree or an order. An applicant must indeed place convincing evidence before a court for the court to be satisfied that there is sufficient reason to review its decision.”

11. To my mind, the question of possession goes beyond merely proving entry into the premise. It also encompasses the control of the use of the premise. The 1<sup>st</sup> Respondent presented compelling new evidence in form of a letter dated 26<sup>th</sup> July 2023 by Assistant Chief Nduta Wandati reads;

“...He owns a land at Kiroe Sub-location Rironi Location and Limuru Sub-county Plot no Limuru/Rironi/57. Francis Gitau Ngure id no 4824092 is the one with authority over 13 tenants who have been using the land since 2015...”

12. Additionally, I considered the lease agreements dated 30th September 2021 between the 1<sup>st</sup> Respondent and Paul Wandati, Elizabeth Njoki and Lucy Njoki, who are collectively tenants on the property. The agreements were due for renewal from 2022-2024 and as such would stand as proof of the 1<sup>st</sup> Respondent’s interest on the suit property. Ultimately, I find that the 1<sup>st</sup> Respondent has proven sufficient reason for review of the orders issued on 15<sup>th</sup> June 2023 and in the foregoing, this Court hereby reviews its orders granted on 15<sup>th</sup> June 2023 in the following terms:

- i. An order of injunction is hereby issued in respect to LR Limuru/Rironi/57 restraining all parties from selling, charging and/or disposing the suit property pending the hearing and determination of the appeal.



ii. Costs of both applications will abide final determination of the appeal.

It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF OCTOBER 2023.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Gacheru for the Appellant.

Ms. Waweru for the Respondents.

Court Assistant; Caroline Nafuna.

