



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Akoro & 6 others v Omusolo (Sued on Behalf of Themselves and as Legal Rep. of the Estate of Enjeloys Omusolo Obari – Deceased) & 2 others (Environment & Land Case 35 of 2016) [2023] KEELC 21291 (KLR) (7 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21291 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 35 OF 2016
BN OLAO, J
NOVEMBER 7, 2023

BETWEEN

JARED ANYIKO ETY AKORO 1ST PLAINTIFF
WYCLIFFE EJAKAIT OMARE 2ND PLAINTIFF
WILLIMINA AKOL 3RD PLAINTIFF
FIRINGINA ABALI 4TH PLAINTIFF
JESCA EJAKAIT OTUBIA 5TH PLAINTIFF
DAVID OLOGE OPURU 6TH PLAINTIFF
MICHAEL ERAPU RICHARD ODEKE 7TH PLAINTIFF

AND

CHRISTIAN WAFULA OMUSOLO 1ST DEFENDANT
EVALINE OBARI (SUED ON BEHALF OF THEMSELVES AND AS
LEGAL REP. OF THE ESTATE OF ENJELOYS OMUSOLO OBARI –
DECEASED) 2ND DEFENDANT
ROMANO ERONE ITADI (SUED ON BEHALF OF THEMSELVES
AND AS LEGAL REP. OF THE ESTATE OF ITADI OBARI –
DECEASED) 3RD DEFENDANT

RULING

1. This Court delivered a ruling on 26th January 2023 in respect to the Notice of Motion by the Defendants dated 24th August 2022. In that notice of Motion, the Defendants, sought the main remedy that this Court be pleased to grant a stay of execution of the judgment and/or decree issued by A.



Omollo J on 21st July 2022 pending the hearing and determination of an appeal against the said judgment.

2. In allowing that application, I made the following orders:
 1. The Defendants shall within 30 days of this ruling deposit with the Deputy Registrar of this Court the original title deed to the land parcel No South Teso/asinge/377 together with all the necessary transfer documents duly executed facilitate the transfer to all the Plaintiffs herein their respective portions of the said land in accordance with the judgment herein.
 2. That title deed and the documents will be kept in the safe custody of the Deputy Registrar until the appeal is heard and determined or until further orders of this Court.
 3. In default of (1) above, this orders of stay shall automatically lapse unless otherwise extended by Court and the Plaintiffs shall be at liberty to execute the decree herein.
 4. Parties shall meet their own costs.
3. The Defendants were unable to meet condition (2) above and they have now approached this Court vide their Notice of Motion dated 9th February 2023 seeking the following orders:
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to review and/or set aside its order of 26th January 2023 in terms of requiring the Defendants to deposit with the Deputy Registrar the original title deed to the land parcel No South Teso/asinge/377 within 30 days of the ruling pending hearing and determination of the appeal.
 4. That costs of this application be provided for.
4. That application is premised on the provisions of Sections 80, 1A, 1B and 3A of the [Civil Procedure Act](#) as well as Order 45 of the [Civil Procedure Rules](#). It is based on the grounds set out therein and supported by the affidavit of Christian Wafula Omusolo the 1st Defendant herein.
5. The gravamen of the application is that by this Court's ruling delivered on 26th January 2023 granting the Defendants an order of stay of execution of the judgment herein pending appeal, one of the conditions was an order requiring the Defendants to deposit with the Deputy Registrar of this Court the original title deed to the land parcel No South Teso/asinge/377 (the suit land) within 30 days of the ruling. However, the Defendants are yet to process the title deed in their favour and are therefore unable to deposit it as ordered. That they have no issue with the restriction already registered against the suit land which will ensure that no dealings are registered against it in a manner adverse to the Plaintiff's interest. They have partially complied with the Court's order by depositing the duly executed transfer forms with the Deputy Registrar. Sufficient cause has been demonstrated by the Defendants to warrant a review of the orders as sought and the application has been made without unreasonable delay.
6. Annexed to the application are the following documents:
 1. A letter dated 30TH January 2023 by the 1st Defendant and addressed to the Land Registrar Busia requesting a copy of the Green Card to the land parcel No South Teso/asinge/377.
 2. Receipt for Kshs.500 paid for the Green Card.
 3. Copy of the Green Card for the land parcel No South Teso/asinge/377.



7. The application is opposed and Wycliffe Ejakait Omare the 2nd plaintiff has filed a replying affidavit dated 24th April 2023 in which he has deposed, inter alia, that there is nothing to show that the Defendants are not in possession of the title deed to the suit land. Neither have they demonstrated by evidence that they have tried to secure the same within the 30 days period. Further, that the Defendants have not annexed copies of the transfer documents to their supporting affidavit although they have alleged that the same have been deposited. Therefore, since the Defendants have not complied with the conditions set by the Court, the stay orders have been vacated. This application is meant to circumvent the wheels of justice and the Defendants want to enjoy the stay but are not willing to comply with the conditions attendant thereto.
8. When the application was placed before me on 13th February 2023, I directed that it be canvassed by way of written submissions. However, only the Defendants' counsel Ms Moraa filed submissions.
9. I have considered the application, the rival affidavits and the submission by counsel for the Defendants.
10. This application is predicated principally on the provisions of Section 80 of the [Civil Procedure Act](#) and order 45 rule 1 of the [Civil Procedure Rules](#).
11. Section 80 of the [Civil Procedure Act](#) provides that:

“ 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.”
12. 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; 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.”

Emphasis mine.
13. In the case of [National Bank Of Kenya Ltd v Ndungu Njau](#) C.a. Civil Appeal No 211 of 1996 [1996 KLR 469], the Court of Appeal said the following about the power of 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 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. 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.”

14. The Defendants have not, as the basis of their application, cited any “new or important matter or evidence”, or “some mistake or error apparent on the face of the record”. That can only mean that this application is premised on the ground of “any other sufficient reason”.

15. What then is “any other sufficient reason?” In the case of *R -v- Cabinet Secretary For Interior And Cordination Of National Government Ex-parte Abdulabi Said Said* 2019 eKLR, the Court stated the following on that issue:

“A Court can review a judgment for any other sufficient reason. In the case of *Sadar Mohamed v Charan Singh & Another* 1959 EA 793 it was held that any other sufficient reason for the purposes of review refers to grounds analogous with the other two (for example error on the face of the record and discovery of new matter).”

16. However, in the case of *Wangechi Kimita -v- Mutahi Wakibiru* C.A. Civil Appeal No 80 of 1985, the Court of Appeal took the view that “any other sufficient reason” need not be analogous with the other grounds set out in the rule because such a restriction would be a clog on the unfettered right given to the Court by Section 80 of the *Civil Procedure Act*. Further, that the other grounds set out in the rule do not in themselves form a genus or class of things with which the third general head could be said to be analogous – see also *Francis Origo -v- Jacob Mungala* C.A. Civil Appeal No 10 of 1980. The current position is that the Court has unfettered jurisdiction to review its orders or decrees for sufficient reasons – *Nairobi City Council -v- Thabiti Enterprises Ltd* C.A. Civil Appeal No 264 of 1996.

17. In my view the terms sufficient reason, sufficient cause and good cause cannot really be distinguished. To attempt to do so would be splitting hairs. They mean, in principle, one and the same thing. Taking a cue from Musinga JA in the case of *Hon Attorney General -v- The Law Society Of Kenya & Another* C.a. Civil Appeal No 133 of 2011 [2013 eKLR], the Judge described the term good and sufficient cause as follows:

“Sufficient cause or good cause in law means the burden placed on a litigant (usually by Court rule or order) to show why a request should be granted or an action excused - See *Black’s Law Dictionary*, 9th Edition, page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.” Emphasis mine.

18. It must also be remembered that while the Court’s discretion is unfettered in cases of review of its orders, such discretion can only be exercised judiciously and on sound reasons which do not cast any doubt on the bona fides of the party seeking the exercise of the Court’s indulgence in his favour.

19. When the Defendants approached this Court vide their application dated 25th August 2022 seeking orders of stay of execution, they pleaded in ground (g) that:

“...the 1st and 2nd defendants are ready and willing to provide for any security to the Court which the Court may deem fit to order for the due performance of the order as may be ultimately be binding on them.”

That decision having been left to the Court, it found it fit to order that the title deed to the suit land, and which is the subject of the dispute herein, be deposited with the Deputy Registrar of this Court for



safe custody. Cases abound where parties have disposed off properties even as the suit is still in Court. And having stated that they were ready to “provide for any security” which this Court may deem fit, the Defendants gave a blank cheque to the Court. And this Court could not think of any better security other than the title deed to the land in dispute.

20. And even assuming that the Court was prepared to indulge the Defendants because their undertaking suddenly become onerous or was perhaps frustrated by other events beyond their control, the explanation given for not availing the title deed to the suit land can hardly be described as rational, plausible, logical, convincing, reasonable or truthful.
21. It is also not lost to this Court that if, as the Defendants claim, they are unable to deposit the original title deed owing to the restrictions thereon, nothing would have been easier than asking the Land Registrar to confirm in writing that the original title deed to the suit land is indeed in his custody. That would have helped tilt the application in their favour because the Land Registrar is the custodian of title deeds. In the absence of that assurance, this Court can only conclude that the Defendants are reluctant to avail the original title deed for reasons best known to themselves. Simply put, the explanation advanced for the failure to comply with that limb of this Court’s orders issued on 26th January 2023 is neither convincing nor reasonable. I am therefore unable to exercise my discretion, unfettered as it is, in their favour.
22. The up-shot of all the above is that the Notice of Motion dated 26th January 2023 is dismissed with costs.

BOAZ N. OLAO

JUDGE

7TH NOVEMBER 2023

RULING DATED, SIGNED AND DELIVERED ON THIS 7TH DAY OF NOVEMBER 2023 BY WAY OF ELECTRONIC MAIL WITH NOTICE TO THE PARTIES

BOAZ N. OLAO

JUDGE

7TH NOVEMBER 2023

