



Namu & another v Njue & another (Environment and Land Case Civil Suit 55 of 2016) [2023] KEELC 21497 (KLR) (1 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21497 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE CIVIL SUIT 55 OF 2016
A KANIARU, J
NOVEMBER 1, 2023**

BETWEEN

MARTIN NJIRU NAMU 1ST APPLICANT

DAVID IRERI NAMU 2ND APPLICANT

AND

PIUS KARIUKI NJUE 1ST RESPONDENT

HAZRON NJIRU NAHASHON 2ND RESPONDENT

RULING

1. Before me for determination is a notice of motion application brought under Certificate of Urgency dated October 31, 2022 and filed on 3/141/2022. The Applicants – Martin Njiru Namu & David Ileri Namu who were the plaintiff's in the main suit are seeking an order to review and or set aside the judgement delivered on October 19, 2022. They are also seeking for an order of stay of execution until the said notice of motion application is heard and determined. The applicants further ask for costs of the application. The grounds on which the application is premised are that they are dissatisfied with the judgment and that they, together with their families, are still living on the land that was in dispute.
2. The respondents, who were the defendants in the main suit, filed grounds of opposition to the application. They averred that the applicants have not disclosed the grounds upon which they rely on while seeking orders of setting aside the judgement herein.
3. The application was disposed of by way of written submissions. I have considered the submissions together with the grounds of opposition filed. I will proceed to address the issues as hereunder:
4. The law which governs applications for review is section 80 of the *Civil Procedure Act* and order 45 rule 1 of the *Civil Procedure Rules, 2010* which provide as follows;
80. 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.

Section 80 (supra) is operationalized by order 45 rule 1 of the [Civil Procedure Rules, 2010](#) which provides as follows:-

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- (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 review of judgement to the court which passed the decree or made the order without unreasonable delay.

5. From the above, it is clear that section 80 of the [Civil Procedure Act](#) is the substantive law which gives the power of review whereas order 45 rule 1(1) is the procedural law which sets out the rules for review. They limit review to the following grounds; 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; on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The application has to be filed without unreasonable delay.

6. On what the ground of “for any sufficient reason” entails, I wish to highlight the observations of the court in the case of [Republic v Advocates Disciplinary Tribunal Ex Parte Apollo Mboya](#) (2019) eKLR where the court held;

“In the case of *Sadar Mohamed v Charan Signh and another* (1963) EA 557 it was held that any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter. Mulla in the [Code of Civil Procedure](#) 18th Edition, Reprint 2012, at Page 1147, paragraph 10 Civil Appeal No 90 of 2001; (2001) LLR 6937 (CAK) (writing on order 47 rule 1 of the [Civil Procedure Code](#) of India), (the equivalent of our Order 45 Rule 1), states that the expression ‘any other sufficient reason’...means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out..., would amount to an abuse of the liberty given to the tribunal under the Act to review its judgement.”



7. The courts are restricted to the grounds set out above when considering an application to review a judgement. In this case the Applicants are seeking for review of the court judgement on the grounds that they are dissatisfied with the said judgement and that they reside on the suit land. I am not persuaded that the reasons given by the Applicants amount to “sufficient reason” within the meaning of the rules set out above. The reasons are neither analogous nor related. The Applicant has also not demonstrated that there is discovery of new or important facts or evidence or that there is an error apparent on the face of the record. This is a matter that went through all the processes of litigation including pretrial conference and hearing. All the parties participated and the court finally made its determination. There was no party that was left out of the case and therefore I find no justification to have another look at the judgement.
8. The general principle of law is that the court becomes functus officio after passing the judgement and it can not revisit the judgement or purport to exercise judicial power over the same matter. My considered view is that if the applicants were dissatisfied with the judgement herein, they should have filed an appeal. Review is obviously not available for a person who is merely dissatisfied with a judgement.
9. The applicants have not demonstrated the merits of their application and the court is not persuaded therefore that this is a suitable case for review. I hereby dismiss the application with costs to the respondents.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 1ST DAY OF NOVEMBER, 2023.

In the presence of Agness Maina for Respondents and Applicants present in person.

Court assistant: Leadys

A.K. KANIARU

JUDGE

01. 11.2023

