



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITUI**

**ELC CASE NO. 26 OF 2021**

**JACOB ILANDI MATI.....PLAINTIFF**

**-VERSUS-**

**SAMUEL MATI GEDION MWINZI.....DEFENDANT**

**RULING**

1. This ruling relates to an Application dated 17<sup>th</sup> June 2021 brought by way of Notice of Motion seeking for ORDERS:

**a) THAT the certificate herein be certified urgent and be disposed expeditiously.**

**b) THAT the judgment of the court dated 3<sup>rd</sup> day of March 2017, and decree issued on 13<sup>th</sup> March 2017 be reviewed or withdrawn and revoked or amended accordingly to reflect the correct particulars to wit LR.4096/119 Grant No. I.R.N 4323/1**

2. A brief background of this matter is that the Defendant failed to enter appearance or file defence and the suit proceeded for hearing undefended before the Hon. Justice Angote. Judgment was delivered on the 3<sup>rd</sup> of March 2017 and it was held as follows;

**I) A declaration be and is hereby issued that the Defendant is holding title to L.R No. 4096/119 grant no. I.R 1839 in trust of the Plaintiff.**

**II) A mandatory injunction be and is hereby issued directing the Defendant to effect transfer of the title of L.R 4096/119 Grant No. I. R.1839 situated in Kitui Town.**

**III) An injunction be and is hereby issued restraining the Defendant from laying any claim over L.R No. 4096/119 grant No. I.R No. 1839 situated in Kitui Town.**

**IV) The Defendant to pay the costs of the suit.**

3. The Applicant claims that he went to register the Decree with the Lands Department at the Central Registry in Nairobi on the 26<sup>th</sup> of November 2020 but the documents were returned unregistered on the ground that the Title was already surrendered.

4. The Plaintiff carried out a search of the suit property and discovered that upon surrender, the title to the suit land L.R No. 4096/119 I.R.N 1839 was changed from Grant I.R.N 1839 to I.R.N 4323. The suit property is now registered as L.R No. 4096/119 Grant No. I.R.No.4323 situate in Kitui town and not L.R No. 4096/119 Grant No. I.R No.1839 as previously known.

5. The Plaintiff claims that the suit property referred to as L.R No. 4096/119 grant No. I.R. No. 1839 in the Plaintiff is one and the same as the property referred to as L.R.No. 4096/119 Grant No. I.R No.4323.

6. The Applicant has brought this Application pursuant to Sections 1A,1B and 3A of the Civil Procedure Rules Act and Order 45 of the Civil Procedure Rules 2010. Order 45 Rules 1 of the Civil Procedure Rules (2010) provides that:

*“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. The power of review is given by Section 80 of the Civil Procedure Act that states 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. The requirements for review are therefore the discovery of a new and important matter that could not have been known at the time the decree or order was issued, a mistake or error apparent on the face of the record, or for any other sufficient reason. In this case, it is for the reason that the Plaintiff states that he has discovered a new matter that was not within his knowledge at the time that the Decree was issued.

9. In **Francis Origo & Another V Jacob KumaliMungala C.A. Civil Appeal No.149 of 2001**, the Court expressed itself as follows:

**“In an application for review, an applicant must show that there has been discovery of new and important matter or evidence which after due diligence was not within his knowledge or could not be produced at that time or he must show that there is some mistake or error apparent on the face of the record or that there was any other sufficient reason and most importantly, the applicant must make the application for review without unreasonable order.”**

10. Looking at the documents produced in court it appears that the initial grant of title to the suit land was issued to the Defendant on 24<sup>th</sup> March 1964 for a lease period of 33 years from 1<sup>st</sup> October 1963. The same was thus to expire on 30<sup>th</sup> September 1996. However, an entry was made on the title on 1<sup>st</sup> September 1988 that *“surrender of the Title to the Government of the Republic of Kenya in exchange with the New Grant I.R.N 4323.”* The new grant issued was a lease for a period of 99 years from 1<sup>st</sup> October 1963. The change in the new grant number I.R.N 4323 is what was not captured in the plaint. The prayers in the plaint are based on the initial grant and the same relate to land parcel L. R. 4096/119 Grant Number I.R.N 1839 instead of the new grant which is number L. R. 4096/119 Grant Number I.R.N 4323. The court is satisfied that the initial title no. L.R NO. 4096/119 Grant No. I.R.N 1839 refer to one and the same property known as L. R. 4096/119 Grant Number I.R.N 4323.

11. From the foregoing it is clear that the judgement and Decree that the Applicant obtained from court cannot be executed as it refers to land a title number that no longer exists and has been changed. It would defeat the cause of justice for the Plaintiff/Applicant to have a Decree from the court that he cannot act upon.

12. I am further satisfied that the overriding objective of the court established by Sections 1A and 3A of the Civil Procedure Act to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes and to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. I am further satisfied that in order to achieve the ends of justice and allow the Applicant to enjoy the fruits of his Decree, the review application before this Honourable Court should be allowed.

### **Final Order**

The court finds that the application dated 17<sup>th</sup> June 2021 has merit and the same is allowed to the extent that the judgment of the court dated 3<sup>rd</sup> day of March 2017, and decree issued on 13<sup>th</sup> March 2017 be reviewed and/or amended and any reference to L.R NO. 4096/119 Grant No. I.R.N 1839 shall be changed to read L. R. 4096/119 Grant Number I.R.N 4323.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 9TH DAY OF NOVEMBER 2021.**

**L. G. KIMANI**

**JUDGE**

Judgement read in open court in the presence of-

C. Nzioka.....Court Assistant

Mr.Kimuli Advocate.....for the Plaintiff/Applicant

N/A.....for the Defendant/Respondent