



Regional Container Freight Station Limited & 2 others v Zum Zum Investment Ltd (Civil Case 116 of 2016) [2024] KEHC 1405 (KLR) (8 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE 116 OF 2016
DKN MAGARE, J
FEBRUARY 8, 2024**

BETWEEN

REGIONAL CONTAINER FREIGHT STATION LIMITED 1ST PLAINTIFF

AKABA INVESTMENT LIMITED 2ND PLAINTIFF

TRANSOUTH CONVEYORS COMPANY LIMITED 3RD PLAINTIFF

AND

ZUM ZUM INVESTMENT LTD DEFENDANT

RULING

1. This is the third time this matter is coming before me. The same is the second time the Applicants are before me. It is essentially an Application for review. Though shown as an Application for review, it is an application under the slip rule.
2. The Application is not opposed. I directed the Applicant to file submissions which the duly did. The Respondent did not file submissions.

The Applicant's submissions

3. The Applicant filed submissions dated 30th November 2023. They submitted. It was submitted that this is a proper Application for review under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The Applicants relied on Section 80 of the *Civil Procedure Act* states 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”.

Section 63 (e) of the *Civil Procedure Act* states that:

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient.

4. The Applicant also relied on Order 45 of the *Civil Procedure Rules* which states as follows:

“(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 a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellants, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

5. Applicants submitted that there were errors apparent on the face of the Ruling dated 12th July 2023 as follows:

- a. Ruling erroneously indicated that it was delivered on 3rd July 2023
- b. The Ruling erroneously stated Plot No. MN/II/74562 instead of Plot No. MN/II/7536.
- c. The Ruling also erroneously stated as Plot No. MN/II/75369 instead of Plot No. MN/II/7562.
- d. Subdivisions leading to 23 plots were pleaded but left out in the Ruling.
- e. The Plots left out were submitted as follows:
 - i. MN/II/7856 Zum Zum Investments Limited 0.0379 Ha, Freehold
 - ii. MN/II/7857 Zum Zum Investments Limited 0.0379 Ha, Freehold
 - iii. MN/II/7858 Zum Zum Investments Limited 0.0363 Ha, Freehold
 - iv. MN/II/7859 Zum Zum Investments Limited 0.0363 Ha, Freehold



- v. MN/II/7860 Zum Zum Investments Limited 0.0379 Ha, Freehold
- vi. MN/II/7862 Zum Zum Investments Limited 0.0742 Ha, Freehold
- vii. MN/II/7962 Zum Zum Investments Limited 0.0387 Ha, Freehold
- viii. MN/II/7961 Zum Zum Investments Limited 0.0387 Ha, Freehold
- ix. MN/II/7960 Zum Zum Investments Limited 0.0387Ha, Freehold
- x. MN/II/7958 Zum Zum Investments Limited 0.0387Ha, Freehold
- xi. MN/II/8078 Zum Zum Investments Limited 0.0398 Ha, Freehold
- xii. MN/II/7880 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xiii. MN/II/7883 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xiv. MN/II/7887 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xv. MN/II/7884 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xvi. MN/II/7966 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xvii. MN/II/7965 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xviii. MN/II/7964 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xix. MN/II/7968 Zum Zum Investments Limited 0.0382 Ha, Freehold
- xx. MN/II/7969 Zum Zum Investments Limited 0.0382 Ha, Freehold
- xxi. MN/II/7967 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xxii. MN/II/7931 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xxiii. MN/II/7392 Zum Zum Investments Limited 0.0800 Ha, Freehold

6. Applicants prayed that the Application for review be allowed.

Analysis

7. The said Application is made under Section 99 of the *Civil Procedure Act*. The said section reads as doth: -

“Amendment of judgments, decrees or orders Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

8. The Application is thus based on Section 80 of the *Civil Procedure Act*, which 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."
9. Similarly, Order 45 of the Civil Procedure Rules outlines the conditions under which a review of Judgment may be sought. Additionally, Section 99 of the Civil Procedure Act allows the correction of clerical or arithmetical mistakes in judgments.
10. In the case of the case of Nation Media Group & another v Awale Transporters Limited [2022] eKLR, the court affirmed the necessity of a review to correct self-evident errors or omissions.
11. The said case, Nation Media Group & another v Awale Transporters Limited [*supra*] states as follows: -
- “ 17. Therefore, the rules lay down the jurisdiction and scope of review limiting it to the grounds of; discovery of new and important matter or evidence which after the exercise of due diligence, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
18. Useful guidance is found in the excerpt from the Judgment in the case of National Bank of Kenya Ltd –vs- Ndungu Njau [1996]KLR 469 where the court stated:-
- “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.”
19. Having stated as above, my humble view is that, it was an omission on the part of the court in failing to address itself on who was to bear the costs of the appeal and such is a proper issue to be addressed in an application for review as the one at hand.
20. Alternatively, the error could be redressed Section 99 of the Civil Procedure Act which is titled, amendment of Judgments, decrees or orders and the mandate therein is for the court to correct any clerical or arithmetical mistake or any error arising therein from an accidental slip or omission.”
12. I have perused the Ruling and noted that there are errors apparent thereon. This indicates the date of delivery. The list of properties was set out in an affidavit. I have noted that the following errors are said to have occurred: -
- a. Ruling erroneously indicated that it was delivered on 3rd July 2023
- b. The Ruling erroneously stated Plot No. MN/II/75369 instead of Plot No. MN/II/7536.
- c. The Ruling also erroneously stated as Plot No. MN/II/74562 instead of Plot No. MN/II/7562.
- d. Subdivisions leading to 23 plots that were pleaded but left out in the Ruling. The Plots left out were submitted as follows:
- i. MN/II/7856 Zum Zum Investments Limited 0.0379 Ha, Freehold
- ii. MN/II/7857 Zum Zum Investments Limited 0.0379 Ha, Freehold



- iii. MN/II/7858 Zum Zum Investments Limited 0.0363 Ha, Freehold
- iv. MN/II/7859 Zum Zum Investments Limited 0.0363 Ha, Freehold
- v. MN/II/7860 Zum Zum Investments Limited 0.0379 Ha, Freehold
- vi. MN/II/7862 Zum Zum Investments Limited 0.0742 Ha, Freehold
- vii. MN/II/7962 Zum Zum Investments Limited 0.0387 Ha, Freehold
- viii. MN/II/7961 Zum Zum Investments Limited 0.0387 Ha, Freehold
- ix. MN/II/7960 Zum Zum Investments Limited 0.0387Ha, Freehold
- x. MN/II/7958 Zum Zum Investments Limited 0.0387Ha, Freehold
- xi. MN/II/8078 Zum Zum Investments Limited 0.0398 Ha, Freehold
- xii. MN/II/7880 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xiii. MN/II/7883 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xiv. MN/II/7887 Zum Zum Investments Limited 0.0400 Ha, Freehold
- xv. MN/II/7884 Zum Zum Investments Limited 0.0400 Ha, Freehold
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- xviii. MN/II/7964 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xix. MN/II/7968 Zum Zum Investments Limited 0.0382 Ha, Freehold
- xx. MN/II/7969 Zum Zum Investments Limited 0.0382 Ha, Freehold
- xxi. MN/II/7967 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xxii. MN/II/7931 Zum Zum Investments Limited 0.0387 Ha, Freehold
- xxiii. MN/II/7392 Zum Zum Investments Limited 0.0800 Ha, Freehold.

- 13. I have perused the Application and agree that the 23 plots were left out. I accordingly, correct the slip and include them. The Ruling is wrongly dated in the final version. I correct the date accordingly.
- 14. I note that the Ruling erroneously stated Plot No. MN/II/75369 instead of Plot No. MN/II/7536 and the Ruling also erroneously stated as Plot No. MN/II/74562 instead of Plot No. MN/II/7562.
- 15. I therefore, delete Plot No. MN/II/75369 and replace it with Plot No. MN/II/7536.
- 16. I therefore, delete Plot No. MN/II/74562 and replace the same with Plot No. MN/II/7562.
- 17. The correct date for delivery of the ruling was 12/7/2023 and not 3 /7/2023.
- 18. Each party will bear their own costs.

Determination

- 19. In the circumstances I make the following orders: -
 - (a) The Application dated 17/11/2023 is merited and is accordingly allowed as follows: -



- (b) The Ruling given on 12/7/2023, is corrected to read that date and the following slips are corrected.
- a. The following properties are included among the properties where leave is granted to attach: -
- i. MN/II/7856 Zum Zum Investments Limited 0.0379 Ha, Freehold
 - ii. MN/II/7857 Zum Zum Investments Limited 0.0379 Ha, Freehold
 - iii. MN/II/7858 Zum Zum Investments Limited 0.0363 Ha, Freehold
 - iv. MN/II/7859 Zum Zum Investments Limited 0.0363 Ha, Freehold
 - v. MN/II/7860 Zum Zum Investments Limited 0.0379 Ha, Freehold
 - vi. MN/II/7862 Zum Zum Investments Limited 0.0742 Ha, Freehold
 - vii. MN/II/7962 Zum Zum Investments Limited 0.0387 Ha, Freehold
 - viii. MN/II/7961 Zum Zum Investments Limited 0.0387 Ha, Freehold
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 - xiii. MN/II/7883 Zum Zum Investments Limited 0.0400 Ha, Freehold
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 - xviii. MN/II/7964 Zum Zum Investments Limited 0.0387 Ha, Freehold
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 - xxi. MN/II/7967 Zum Zum Investments Limited 0.0387 Ha, Freehold
 - xxii. MN/II/7931 Zum Zum Investments Limited 0.0387 Ha, Freehold
 - xxiii. MN/II/7392 Zum Zum Investments Limited 0.0800 Ha, Freehold.
 - xxiv. MN/II/7536 Zum Zum Investments Limited Freehold.
 - xxv. MN/II/7562 Zum Zum Investments Limited Freehold.
- (c) Plot No. MN/II/74562 is removed from the ruling.
- (d) Plot No. MN/II/75369 is removed from the Ruling.
- (e) Each party to bear their own costs.



**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 8TH DAY OF FEBRUARY, 2024.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Muchoki for the Plaintiff

No appearance for the Respondent

