



REPUBLIC OF KENYA



**In re Estate of James Mathiu Ndiira alias James Mathiu M’Ndiira (Deceased)
(Succession Cause 639 of 2012) [2024] KEHC 5566 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 639 OF 2012**

TW CHERERE, J

APRIL 18, 2024

**N THE MATTER OF THE ESTATE OF JAMES MATHIU
NDIIRA ALIAS JAMES MATHIU M’NDIIRA (DECEASED)**

BETWEEN

JEREMIAH GITONGA MATHIU 1ST PETITIONER

DAVID KINYUA MATHIU 2ND PETITIONER

AND

PETER KIRIINYA JAMES INTERESTED PARTY

AND

SILAH GATWIRI JOHNSON APPLICANT

ZIPPORAH KABURU KUBAI APPLICANT

AGNES GAKII NDIRANGU APPLICANT

PHILIS KANINI APPLICANT

CATHERINE MWENDWA APPLICANT

RULING

1. By orders issued on 03rd October, 2023, this court ordered the cancellation of titles for among others the Applicants herein after the 1st Petitioner stated that the Peter Kiriinya James (Interested Party) had not been involved in the filing of this cause.
2. Applicants are aggrieved by the said order on the grounds among others that:



1. The Petitioners did not serve them with the summons dated 12th June, 2023 that culminated in the cancellation of their title deeds which is prejudicial not only to them but to third parties to whom they have sold portions of their shares to
2. Petitioners misled the court to believe that the Interested Party did not participate in the cause
3. Applicants have by summons dated 14th November, 2023 moved the court seeking that the orders issued on 03rd October, 2023 be stayed and reviewed, set aside and or lifted. They also seek that the court grants orders that meet the ends of justice.
4. Petitioners did not oppose the application. The Interested Party by his replying affidavit sworn on 12th February, 2024 does not deny that the summons dated 12th June, 2023 that culminated in the cancellation of the Applicants' title deeds among others was not served on the Applicants.

Analysis and Determination

5. I have considered the summons in the light of the affidavits on record and submissions filed on behalf of the Applicants.
6. The crux of the matter really is whether Applicants ought to have been afforded an opportunity to defend their titles before they were cancelled.
7. In the case of *Sceneries Limited v National Land Commission* (2017) eKLR, the Court held that;

“the right to a fair hearing under Article 50(1) of the *Constitution* encompasses several aspects. these includes, the individual being informed of the case against her/him, the individual being given an opportunity to present/her/his side of the story or challenge the case against her/him and the individual having the benefit of a public hearing before a court or other independent and impartial body.”
8. The rules of natural justice “*audi alteram partem*” were elucidated in the case of *Msagha vs. Chief Justice & 7 Others* Nairobi HCMCA No. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553) where eth court held that:

“The Court observes firstly that the rules of natural justice “*audi alteram partem*” hear the other party, and no man/woman may be condemned unheard are deeply rooted in the English common law and have been transplanted by reason of colonialization of the globe during the hey-days we of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision...It is paramount at this juncture that this court establishes the ingredients and/or components of natural justice. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be



adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material."

9. Order 45 of the *Civil Procedure Rules* provides as follows:

(1) Any person considering himself aggrieved-

(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.

10. In the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, the Court of Appeal 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 require no 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."

11. It is to be remembered that the Petitioners and the Interested Party had their day in court and it is only fair that the Applicants too be treated justly by affording them an opportunity to be heard.

12. The Applicants having been holders of the cancelled titles were entitled to the application of the Rules of natural justice which requires that no person should be condemned unheard. I therefore find that the cancellation of Applicants title deeds, which order affected them adversely without giving them a hearing contravened the cardinal rules of natural justice and that alone is sufficient ground for review of the orders issued on 03rd October, 2023.

13. From the totality of the material placed before the court, I find that review of the orders issued on 03rd October, 2023 is merited so that the competing rights and interests of all the parties in this matter can be balanced.

14. From the foregoing analysis, it is hereby ordered:

1. The orders issued on 03rd October, 2023 are reviewed and together with all consequential orders set aside in their entirety
2. The 1st to 5th Applicants shall henceforth be referred to as the 2nd, 3rd, 4th, 5th and 6th Interested Parties
3. This court directs that the summons for revocation dated 12th June, 2023 be served on the Applicants (2nd, 3rd, 4th, 5th and 6th Interested Parties) herein within 14 days from today's date
4. Upon being served, the Applicants (2nd, 3rd, 4th, 5th and 6th Interested Parties) shall have 14 days each to file their responses



5. Upon being served with responses, either party shall be at liberty to file any additional affidavits if need arises
6. This cause will be mentioned on 12th June 2024 to confirm compliance with these orders and for direction as to the hearing of the summons dated 12th June,2023
7. Mention notice be served on the Petitioners and/or their advocates by the 1st Interested Party

DELIVERED AT MERU THIS 18TH DAY OF APRIL 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicants - Mr. Mokuu for Mokuu Obiria & Co. Advocates

For 1st Interested Part - Mr. Kithinji for Kithinji Kirigiah & Co. Advocates

For 1st Petitioner - Present in person

For 2nd Petitioner - Present in person

