



**Republic v Minister for Lands & another; Nguru (Representing Kiura Nguru) (Interested Party); Mwaniki & 16 others (Exparte); Ngoci & 36 others (New Applicant) (Miscellaneous Civil Application 25 of 2013) [2024] KEHC 10047 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10047 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS CIVIL APPLICATION 25 OF 2013  
RM MWONGO, J  
AUGUST 2, 2024**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**THE MINISTER FOR LANDS ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN NJIRU NGURU (REPRESENTING KIURA NGURU) .... INTERESTED PARTY**

**AND**

**MUTURI MWANIKI & 16 OTHERS ..... EXPARTE**

**AND**

**LEONARD KIBUTI NGOCI & 36 OTHERS ..... NEW APPLICANT**

**RULING**

**Background**

- By an order issued by this Court (Mulwa, J.) on 14<sup>th</sup> October 2021, the following orders were issued:
  - An order setting aside the orders issued on 11 April 2018 dismissing the main suit and reinstating the suit.



- An order staying the implementation of the award/judgment dated 27<sup>th</sup> October 2011 on Minister & Land Appeal Case No. 324 of 2003 pending inter partes hearing of its application.

- An order reinstating its orders of stay issued on 11<sup>th</sup> July 2012 against the implementation of the said judgment dated 27<sup>th</sup> October 2011 in Minister's Land Appeal Case No. 324 of 2003.

The said orders are still extant herein.

### **The Present Application**

2. Thirty-seven (37) New Applicants, all claiming to be registered proprietors of parcels in the suit land, filed an application dated 21<sup>st</sup> December 2021 seeking:
  1. That pending the hearing and determination of the motion herein the court be pleased to order stay of hearing and determination of the suit herein.
  2. That the court be pleased to review and set aside its orders of 14<sup>th</sup> October, 2021 reinstating the suit herein for hearing and thereafter make an order that judgement in Ministers Land Appeal no. 324 of 2003 has been fully executed and hence the suit herein was overtaken by events.
  3. Cost be borne by the respondents.
3. The Application by the New Applicants is premised on the following:
  - a. The new applicants who are the current registered proprietors for the suit lands were never heard or notified of the proceedings when the application dated 16<sup>th</sup> December, 2019, was heard and determined.
  - b. The applicants are in full occupation of the suit lands.
  - c. The applicants in the application dated 16<sup>th</sup> December, 2019 failed to disclose material facts to the court.
  - d. The new applicants are not privy to the dispute which gave rise to the suit herein.
  - e. The ex-parte applicants herein have never utilized or occupied the suit land.
  - f. Had the true information to the status of the suit land been availed to the court, the court would have come up with a different decision all together.
  - g. The New Applicants stand to suffer irreparable loss.
4. The New Applicants deposed a supporting affidavit with the following major averments:
  1. That myself and co-applicants got title deeds to the respective lands after the award in Ministers Land appeal case no.324 of 2003 was executed.
  2. That some of us got the said parcels as purchasers for value without notice to any defect to the titles.
  3. That contrary to the averments contained in the application dated 16<sup>th</sup> December, 2019, we are the ones who have all through been in occupation of the suit land and not the ex parte applicants.



4. That we were never served with the application dated 16<sup>th</sup> December, 2019 in order for us to respond to the same and hence we were condemned unheard which is against the Rules of natural Justice.
5. That the ex parte applicants did not annex the searches to the suit land in their application dated 16<sup>th</sup> December, 2019 because obviously they knew they would not succeed in their application which was determined two (2) years after the award had been executed.
6. That we are now seeking for the orders of 14<sup>th</sup> October, 2021 delivered on 11<sup>th</sup> November, 2021 be reviewed and set aside.
7. That the orders of 11<sup>th</sup> November, 2021 if left unchallenged will open a Pandora's Box for the following reasons:
  - a. The current registered proprietors were not a party to the original suit.
  - b. Some of the registered proprietors have since died.
  - c. Many of the applicants herein are purchasers for value without notice to the defect in the title.
  - d. Some resultant parcels of Land have been subdivided further and even been sold to 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> parties who are not a party to this suit.
  - e. The suit herein has been overtaken by events since the Minister's award has been fully implemented.
  - f. The ex parte applicants failed to apply for preservation of the suit land before their application could be heard.
  - g. The ex parte applicants do not reside and have not worked on the suit land.
5. The respondents opposed the application by filing Grounds of Opposition, the grounds of which are, in essence, as follows:
  1. The application is in contravention of the mandatory provisions of Order 1 of the Civil Procedure Act and Rules, 2010 having not sought leave for joinder of the new parties.
  2. The main suit has been set down for hearing on the 15<sup>th</sup> February, 2022.
  3. The application is an abuse of the court process.
6. Muturi Mwaniki, on behalf of 16 other Ex Parte Applicants deposed a replying affidavit with the following major averments:
  1. That the Advocate on record representing the Interested Party at the time currently representing the New Applicants was duly served with the Motion on the 10<sup>th</sup> January, 2020 at 12.50 pm and acknowledged receipt of the service by affixing their stamp and appending their signature on the first page of the Application.
  2. That in further response to paragraph 5, there is a sworn affidavit of service by Dickson Kariuki, a licensed court process server dated 20<sup>th</sup> January, 2020, a clear indication that the application was duly served upon the Interested Party.
  3. That in the premises, the Advocate on record for the Interested Party having been aware of the litigation over the suit properties and still having taken instructions on behalf of the New



Applicants is thus conflicted as he failed to act professionally hence the motion to circumvent the position of knowledge and existence of the application for reinstatement of the suit and resultant orders.

4. That the Ex parte Applicants/Respondents were not aware of any subdivisions at the time hence the move to directly serve the Interested Parties through their Advocates on record. It is appalling that the said Advocate agreed to represent the New Applicants.
5. That further, in response to ground (c) and (g) of the Motion and paragraph (8) of the Supporting Affidavit, the Ex parte Applicants wrote to the Land Registrar, Mbeere South District, through their Advocates on record, a letter dated 27<sup>th</sup> January, 2020 and reminder letters dated 21<sup>st</sup> June, 2021 and 11<sup>th</sup> August, 2021 respectively, requesting to be supplied with the respective green cards; which were vital in pursuing the interests in the parcels of land. Notably, the Land Registrar, Mbeere South District failed to respond.
6. That failure by the Land Registrar, Mbeere South District to timely respond, prompted a further letter addressed to the Chief Lands Registrar, Ministry of Lands, Ardhi House, complaining against the Land Registrar, Mbeere South, who misled the Ex parte Applicants/ Respondents by giving a green light for them to pay for the green card's application for the suit properties.
7. That the New Applicants allegations that the ex parte applicants have failed to place evidence before the court to show the status of the suit land is therefore unmerited and misconceived.
7. The new applicants deposed a supplementary affidavit with the following major averments:
  1. That I am advised by my advocate on record which advise I verily believe to be true that John Njiru Nguru while replying to the motion dated 16<sup>th</sup> December, 2020 clearly indicated that the award had been fully executed and the parcels were in the hands of 3rd parties.
  2. That it was the duty of the applicant in the said motion to go ahead and carry out the search to establish the true status but he did not but resulted into writing vexatious and obnoxious letters to various public offices.
  3. That the replying affidavit clearly confirms that the orders reinstating the suit were done before "WE" the new registered owners were heard which is contrary to rules of natural justice.
  4. That the copy of records for the suit lands are readily available in the lands office and that is why we were able to file the list of green cards dated 20<sup>th</sup> January, 2022 in conformity with Court orders of 23<sup>rd</sup> December, 2021 which directed that we file evidence when our interest to the suit land crystallised.
  5. That the replying affidavit by the ex parte applicant herein should be struck out and expunged from the record since it has been filed two (2) years down the line without the Court leave.
8. In compliance with the court's orders to file written submissions only the New Applicants filed submissions.

### **The New Applicants Submissions**

9. The 37 new applicants submit that they were not party to the application which ordered the reinstatement of the suit herein after the suit had been dismissed. The Minister's award which gave rise to this suit was openly executed and the beneficiaries of the said award got their titles which they later



sold to the New Applicants as they got the title themselves for being members of the clan. The original suit land has further been subdivided and sold to 3<sup>rd</sup> parties some of whom have since died.

10. Further they submit that the interested parties failed to disclose to the court that the Minister's award had long been executed. The reinstatement of the suit herein was done through non-disclosure of material facts.
11. The new applicants have complied with the orders of the 23<sup>rd</sup> December 2021 by filing green cards for the resultants land parcels to show when the new applicant's interest to the suit land crystallised.
12. Finally, the New Applicants submit that the review order is open to anybody interested and not necessarily only to the original parties in the suit pursuant to the wording of Order 45.

### **Issues for Determination**

13. The issues for determination are as follows:
  1. Whether the Court should entertain the new applicant's application.
  2. Whether the court should review and set aside its orders of 14<sup>th</sup> October, 2021 reinstating this suit.

#### Analysis and Determination

##### Whether the Court should entertain the application of the New Applicants

14. The respondents oppose the application in that no leave was sought by the applicants to be joined in the suit. They however did not file submissions to ventilate the point.
15. Whilst it is true that the New applicants did not seek an order for joinder, the court has the discretion to join any party that it considers may help the court to achieve the fair administration of justice.
16. I note that this case has been running since 2012, and that by virtue of the numerous people affected by the suit has huge public interest implications, not to mention that the subject matter is land which is very emotive in this country.
17. The court further notes from the material provided in the New Applicants' application, that they have been able to place themselves squarely as beneficiaries of the lands that emanated from the main suit land, namely, Parcel 159, which is the subject of the award in Ministers Land Appeal Case No.324 of 2003.
18. Thus, despite the absence of an application for joinder, I consider that in light of the overriding import of Article 50(1) of the Constitution, joinder should be granted in any event. That Article provides that:

“ Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or, if appropriate, another independent and impartial tribunal or body”

19. In allowing the New Applicants to be enjoined, I need say no more on the point.

Whether the court should review and set aside its orders of 14<sup>th</sup> October, 2021 reinstating this suit.

20. The New Applicants seek that the court do review and set aside its orders of 14<sup>th</sup> October, 2021 that reinstated the suit herein for hearing and thereafter make an order that judgement in Ministers Land Appeal No. 324 of 2003 has been fully executed and hence the suit herein was overtaken by events.



21. They depose that they received title deeds to the respective land after the award in Ministers Land Appeal Case No.324 of 2003 was executed. That they were never served with the application dated 16<sup>th</sup> December, 2019 in order for them to respond to the same and hence were condemned unheard.
22. Further, the applicants in the application dated 16<sup>th</sup> December, 2019 failed to show the court the status of the suit land. The court proceeded to reinstate the suit on the assumption that the Minister’s award had not been executed while it was indicated that the same was executed more than two years ago.
23. Order 45 Rule 1 of the *Civil Procedure Rules*, 2010 provides as follows:  
45 Rule 1 (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.”
24. This provision was expounded in the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR where it was stated:  
“A clear reading of the above provisions shows that Section 80 gives the power of review while Order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds- (a) 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; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.”
25. The New Applicants argue that the orders of 14<sup>th</sup> October, 2021 should be set aside as the judgement in Ministers Land Appeal No. 324 of 2003 has been fully executed. This would fit into the category of other sufficient reason for review.
26. On their part the exparte applicants depose that the interested party having participated in the proceedings upon service, failed to disclose material facts on the of the suit land.
27. The New Applicants have demonstrated in their supporting and supplementary affidavits that the Interested Party while replying to the motion dated 16<sup>th</sup> December, 2020 clearly indicated that the award in Ministers Land Appeal No. 324 of 2003 had been fully executed and the parcels were in the hands of 3<sup>rd</sup> parties. On their part, the New Applicants state that they have received parcels apportioned from the suit land which is the subject matter of the said Land Appeal case.
28. Further, that the copy of records for the suit lands are readily available in the land’s office, which is what enabled them to file the list of green cards dated 20<sup>th</sup> January, 2022 in conformity with Court orders of 23<sup>rd</sup> December, 2021 which directed that they file evidence of their interest in the suit land.



29. Nevertheless, the Exparte applicants urge the court to order the Land Registrar to provide them with the respective copies of green cards to the respective suit properties. The green cards are the crux and the basis of legitimacy of the subject matter in dispute.

### **Conclusion and Disposition**

30. The New Applicants have met the threshold for review of the orders of 14<sup>th</sup> October, 2021 by supplying the court with material evidence of sub-division and transfer of the suit land to new owners.
31. The court notes that ever since these proceedings begun with the original filing of the Judicial Review Application in 2012, the suit has been in a state of “ping pong” with one application after the another reversing or reinstating previous orders. I think it is time to put to a rest the case and make a final determination on it based on its substantive merits.
32. Accordingly, I think the orders that commend themselves to me are such as will enable the substantive suit to be determined expeditiously, once and for all.
33. I am therefore persuaded to review the Court’s orders of 14<sup>th</sup> October 2021.
34. In so doing, the following orders are hereby issued in substitution:
1. The New applicants are hereby enjoined in the proceedings herein.
  2. The Judicial Review Application dated 12<sup>th</sup> July 2012 shall be heard substantively on a fast-tracked basis.
  3. The Minister of Lands, the Registrar of Lands and Director of Land Adjudication are hereby prohibited from registering any transaction on any of the affected lands emanating from Plot Number 1959 including:  
Mbeere/Kiambere/2592 - 2599  
Mbeere/Kiambere/2600, 2604, 2626,2628, 2930  
Mbeere/Kiambere/3332, 3474, 3475, 3481, 3487, 3498,3499  
Mbeere/Kiambere/3501, 3553 3716  
Mbeere/Kiambere/2316  
Mbeere/Kiambere/4554, (4663, 4664)  
Mbeere/Kiambere/2592  
Mbeere/Kiambere/2594, (4730, 4731)  
Mbeere/Kiambere/2595, 2596  
Mbeere/Kiambere/4553  
Mbeere/Kiambere/4662  
Mbeere/Kiambere/2599  
Mbeere/Kiambere/2601  
Mbeere/Kiambere/2877  
Mbeere/Kiambere/4611  
Mbeere/Kiambere/2603



Mbeere/Kiambere/25  
Mbeere/Kiambere/2604  
Mbeere/Kiambere/2628  
Mbeere/Kiambere/3332  
Mbeere/Kiambere/3474, 3499, 3716  
Mbeere/Kiambere/3481  
Mbeere/Kiambere/3487  
Mbeere/Kiambere/3504, 3553  
Mbeere/Kiambere/2316  
Mbeere/Kiambere/4555 (4718, 4719)  
Mbeere/Kiambere/4612  
Mbeere/Kiambere 4614  
Mbeere/Kiambere 4610  
Mbeere/Kiambere 4613  
Mbeere/Kiambere/4556, 4557  
Mbeere/Kiambere/2930  
Mbeere/Kiambere/2626  
Mbeere/Kiambere/2602  
Mbeere/Kiambere/1959  
Mbeere/Kiambere/3498, and  
Mbeere/Kiambere/3471

4. The Ex parte applicants shall issue a Notice in a local daily of national circulation, and in the Notice Boards of the Ministry of Lands in Kirinyaga and Embu Lands Offices notifying all interested parties /beneficiaries of Plot No 1959 pursuant to the Award in Minister of Lands Appeal Case No 324 of 2003 of the suits herein, and inviting them to:
  - i. File an application to join suit within 60 days of publication of the said notice
  - ii. File such application in the present suit file
  - iii. Ensure that each party joining the shall with their filings provide verified/ verifiable material documents detailing their respective interest in the suit/suit land, how such interest arose and the present status of such interest
  - iv. Take notice that after lapse of 60 sixty days from the date of the said Notice, no party shall be permitted to thereafter be enjoined
5. All pending interlocutory applications already filed in the present suit are hereby rendered otiose and shall not be heard
6. Information concerning the substantive Judicial Review Application dated 12<sup>th</sup> July 2012 may be obtained from the Deputy Registrar at the High Court Kerugoya



7. All pending interlocutory applications already filed shall not heard.
  8. Information concerning the Judicial Review Application dated 12<sup>th</sup> July 2012 may be obtained from the Deputy Registrar High Court at Kerugoya.
  9. A mention for a status conference involving all parties is fixed for 11<sup>th</sup> December, 2024 at Kerugoya High Court.
25. Orders accordingly.

**DATED AT KERUGOYA THIS 2<sup>ND</sup> DAY OF AUGUST 2024**

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**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Ms. Kihu holding brief for Kiongo for 1<sup>st</sup> Respondent & 2<sup>nd</sup> Respondent
2. Kamanda for 1<sup>st</sup> Respondent/Applicant
3. L. Ngochi for 1<sup>st</sup> Applicant represented by Mugambi
4. Court Assistant, Murage

