



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Ngeno v Soi & another (Miscellaneous Application 64 of 2018)  
[2023] KEHC 811 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 811 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS APPLICATION 64 OF 2018  
AN ONGERI, J  
FEBRUARY 10, 2023**

**BETWEEN**

**ELIZABETH CHEPKIRUI NGENO ..... PLAINTIFF**

**AND**

**RUTH CHELANGAT SOI ..... 1<sup>ST</sup> RESPONDENT**

**MARY CHELANGAT CHUMO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> petitioners filed a notice of preliminary objection dated 8/2/2021 against the objector/applicant's application dated 27/9/2019 on the following grounds:-
  - i. That the attempt by the objector/applicant to review the ruling of the honourable court dated July 15, 2019 amounts to resjudicata as the Lower Court's Ruling dated September 26, 2019, in Sotik PM Cause No. 83 of 2011 substantially determined the Revocation and/or Annulment of confirmed Grant dated June 13, 2011
  - ii. That the review of the court's ruling dated 15<sup>th</sup> July 2019 does not meet the threshold of the review as set under order 45(1)(2)9i).
  - iii. That the objector/applicant ought to have appealed against the ruling of Lower Court dated September 29, 2019 being Sotik PM Cause No. 83 of 2011 which was culmination from direction of this Honourable Court's Ruling foresaid and subsequent filing of revocation of grant in the said lower court's proceedings and its determination.
  - iv. That this application is an abuse of court process, frivolous and vexatious.
2. The parties were directed to file submissions to the notice of preliminary objection dated 8/2/2021.



3. The petitioners/respondents submitted that the court gave genuine reasons for dismissing the application dated 27/9/2019 and the applicant cannot turn around again by reviewing a matter which other courts had adjudicated. That the objector/applicant would have either appealed against the lower court ruling or filed the application for revocation of grant at the proper court for determination.
4. The petitioners/respondents submitted that the applicant failed to disclose any new evidence or mistake or any sufficient cause to warrant an order of review of the court's ruling dated 15/7/2019 as provided for under order 45 rule 1 of the Civil Procedure Rules.
5. The petitioner/respondents further submitted that the objector/applicant failed to annex a copy of extracted order from the ruling of the court dated 15/7/2019 as provided for by order 45 rule 1 of Civil Procedure Rules thereby rendering the entire application fatally defective. They urged the court to struck out the entire application for failure to attach an extracted order. They cited the case of Suleiman Murunga v Nilestar Holdings Limited & another [2015] eKLR, Nairobi Environment & Land Case Civil Suit 1549 of 2013.
6. The petitioners/respondents submitted that the applicant's application for review of the court's ruling suffered serious and fatal defects which was not curable in law and urged the court to dismiss the same.
7. The objector/applicant submitted that in the ruling dated 26/9/2019, Sotik P. M's court declined to give orders for lack of jurisdiction and therefore the applicant moved this court. That the allegation of the matter being Res-Judicata cannot stand as the two courts are different and one had no jurisdiction over the matter. She cited rule 44(1) of Probate and Administration Rules.
8. The objector/applicant submitted that the court's ruling dated 15/7/2019 met the threshold for review because the application whose review is being sought was brought under rule 44(1) of the Probate and Administration Rules but the court did not consider the same in its ruling and that the objector's written submissions were exchanged with the one that did not have any bearing to the case and the court erroneously considered it.
9. The objector/applicant further submitted that the objector/applicant could not appeal the lower court's ruling of 26/9/2019 because the said ruling was issued without jurisdiction.
10. The objector/applicant reiterated that her application had merit and urged the court to dismiss the preliminary objection for lack of merit and the petitioners/respondents be ordered to file written submissions to the application for review and if the said petitioners/respondents do not wish to file any submission the court should issue a ruling date.
11. I have considered the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> petitioners and the submissions filed herein.
12. I find that the court in its ruling dated 15/7/2019 said that this miscellaneous file is an abuse of the court process for two reasons, first that the application ought to have been filed in the Succession Cause and not in a separate Miscellaneous file and secondly that a determination had been made in Kericho Environment and Land case No. 64 of 2018(OS) on the subject parcel of land and eviction orders issued against the objector/applicant which orders had not been appealed against or varied.
13. I allow the preliminary objection and rule that this miscellaneous case is not properly filed.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**A. N. ONGERI**  
**JUDGE**

