



REPUBLIC OF KENYA



KENYA LAW
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**Wanjiku v Kangema Farmland PLC (Civil Case E010 of 2022)
[2023] KEHC 17406 (KLR) (16 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL CASE E010 OF 2022**

**J WAKIAGA, J
MAY 16, 2023**

BETWEEN

LOISE WANJIKU APPLICANT

AND

KANGEMA FARMLAND PLC RESPONDENT

RULING

1. By an Application under Certificate of Urgency dated September 29, 2022 under the provisions of Section 1A 1B and 3A of the Civil Procedure Act and Order 45 rules 1,2,3 and Order 51 rule 1 of the Civil Procedure Rules, the Applicant sought for order of review of the Court's ruling rendered on September 15, 2022 on the grounds that the Court had held that the Applicant had met the threshold for the grant of injunction save that the Court was not sure whether the Defendant Respondent existed in view of the fact that that it had been published on the gazette Notice Number 11661 with intention to be struck off from the company register .
2. That the office of the Registrar of Companies has now confirmed that existence of the Respondent and therefore the application should be allowed as the Directors of the Respondent intends to wind up the same without having issued the Applicant with her balloted plot hence contravening her constitutional right to property.
3. The application was supported by the annexed affidavit of Kibe Njoroge the Applicant's Advocate on record in which it was deposed that the Applicant filed a notice of motion application dated July 18, 2022 seeking an injunction against the Defendant/Respondent from being wound up pending the hearing and the determination of the application and main suit and that by a ruling thereon dated September 15, 2022 stated that on the face of it the Plaintiff had shown that she is entitled to a sub-plot which the Defendant had not delivered and would have had no hesitation to grant the injunction sought save that the period specified in the notice to show cause had long expired.



4. It was therefore contended that since the same had provided evidence from the Registrar of Companies that the Respondent exists and had not been struck off the companies register the Court order against the same would not be futile and that failure to allow the application would defeat the end of justice as the Directors of the Respondent intends to wind up the same without having issued the Applicant with her balloted plot in contravention of her constitutional right to property.
5. The Defendant though served, did not file any pleadings in opposition to this application.

Submission

6. Directions were issued on the disposition of the application by way of Written submissions in which it was submitted that Section 80 of the *Civil Procedure Act* provides the framework for review as well as Order 45 Rule 1 and that the application was founded on the discovery of new and important evidence and any other sufficient reason. It was contended that the Applicant was not aware of the Respondents winding up notice until the same was annexed to the replying affidavit and that she did not have time to ascertain if the Respondent existed and only did so after the Court ruling, through a letter from the registrar which constitute an important matter of evidence which would have assisted the Court.
7. It was contended further that since there is intention to wind up the Respondent, the same may evade liability and the Applicant suit will be rendered nugatory.
8. The Respondent did not file any submissions as at the time of the Ruling.

Determination

9. The order set for review was issued by Justice Kimondo who has since gone on transfer and therefore no longer exercise jurisdiction in this Court station. It is therefore my considered view and hold that this Court has jurisdiction to determine the application herein.
10. The only issue for determination is whether the Applicant has met the threshold for the grant of the orders for review. The starting point would be to set out the law and the conditions to be met by a party seeking review orders.
11. The Court in *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR stated that Section 80 gives the power of review while Order 45 sets out the rules which restrict the scope to the discovery of new and important matter or evidence which after the exercise of due diligence was not in the knowledge of the Applicant or could not be produced or on account of error or mistake on the face of the record or for any other sufficient reason and that for the material to qualify to be new and important evidence or matter, it must be of such nature that could not have been discovered had the Applicant exercised due diligence and was not available to the Applicant and the Court.
12. The Court proceeded to state that for any other sufficient reason to a ground for review, the same must be analogous error on the face of the record and discovery of new matter and that the happening of some subsequent event or development cannot be taken note for declaring the initial order as vitiated by an error and that the mere discovery of new matter is not sufficient ground for review unless it is shown that such matter was not within his knowledge and even after the exercise of due diligence the same could not be produced before the Court earlier.
13. In this matter the Applicants contention is that she was unable to produce the evidence of the existence of the Applicant whereas she had deposed that she had notice of the intention to wind up the Respondent and therefore the same to my view did not qualify as a ground for the grant of the order sought as it is clear that the Respondent had raised the issue in its replying Affidavit and had she



exercised due diligence this evidence would have been produced before the Court as it was in existence at the time of the ruling.

14. Further the Applicant has not taken into account the Courts finding at paragraph 15 of the Ruling that the dissolution of the Respondent was at the behest of the Registrar of Companies who has not been enjoined as a party and therefore any motion against the company is on a legal quicksand.
15. I must also add for effect purposes that the same having notice of the intention to wind up the Respondent is entitled to the rights and remedies as a creditor under the winding up provisions of the *Companies Act* and is therefore not without remedies in addition to the Courts finding that declining to grant the orders did not mean that she is not entitled to a sub-plot of the suit land.
16. I therefore find and hold that the Applicant has not met the threshold for the grant of the orders for review and dismiss the application herein with cost being in the cause.

DATED SIGNED AND DELIVERED AT MURANGA THIS 16TH DAY OF MAY 2023.

J. WAKIAGA

JUDGE

In the presence of:

No appearance by the parties

Court Assistant - Jackline

