



Weru & 21 others v Aguthi Farmers Co-operative Society Limited (Miscellaneous Civil Application 87 of 2017) [2023] KEHC 17384 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17384 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL APPLICATION 87 OF 2017**

**M MUYA, J
MAY 11, 2023**

BETWEEN

SAMUEL WERU & 21 OTHERS APPLICANT

AND

AGUTHI FARMERS CO-OPERATIVE SOCIETY LIMITED RESPONDENT

RULING

1. The notice of motion application dated the 24th June 2020. Seeks to set aside the decree dated 8th February, 2019 and the orders granted on 2nd July 2019

The grounds are that:-

1. The decree was entered exparte against the applicant on 8th February 2019
2. Orders were issued exparte against the applicant on 2nd July 2019.
3. That in the Nyeri High Court Miscellaneous Application No. 153 of 2004 Judgment and order at paragraph 3, the Respondent was ordered not to fence Gaaki Central to join Aguthi unlawfully.
4. The applicant intends to set aside exparte decree and illegal orders against the applicant which respondents evidence did mislead the court to rely on false information.
5. It is in the interest of Justice that new discovery of important matters or evidence which was not within the applicants' knowledge has emerged.
6. That the letters dated 21st April 2004 which cancelled the registration of the applicant and three other societies was quashed and their Registration certificates reinstated by the High Court order dated 6th July 2006 in raise application No.153 of 2004 at Nyeri High Court.



7. The threat of execution is read and imminent as the Respondent has been demanding money from the applicants in absence of valid execution orders.
 8. That the application has been brought without delay
 9. There is urgency in this application as the applicant needs to challenge the Aguthi Cooperative society in its decree and orders.
 10. There is a standing Judgment in Nyeri High Court Misc Application No.153 of 2004 which resulted through its Judgment ordered Aguthi and Mutheka should not force other Cooperative Society to join them.
 11. The order is dated 6th July 2006 with a notice of penal consequences to the Respondent.
 12. The applicants are ready to comply with such orders as may be issued by this court.
 13. The Respondent ignored and abused High Court order dated 6th July 2006, the High Court has to defend the integrity of its orders.
 14. No prejudice will be suffered by the Respondent by the grant of the orders sought.
2. This application is opposed. The Respondent has filed a replying affidavit sworn by its chairman one James Wachira Ndiangui in which he deposes at Paragraph 5.

That the orders sought to be set aside are the decree dated 8th February 2019 and the other dated 2nd July 2019 issued by the Co-operative Tribunal in Nyeri CTC No.3 of 2011 between the applicant and the Respondent.

3. That no appeal has ever been filed against the said decree and order.
4. That this Court has no Jurisdiction to issue the orders sought as it is not sitting as an appeal court against the decree and order of the co-operative tribunal.
5. That this suit was initially filed by the applicant seeking extension of time to file appeal against the decree and order of the Co-operative Tribunal.
6. That on the 27th 11.2017 this court granted the request on condition that the appeal be filed within 30 days.
7. That the appellant has not filed an appeal to date that instead of filing the appeal the applicant filed yet another application for review dated 13/12/2017.
8. That on 25/5/2018 this court found that the application had no merit and same was dismissed.
9. That the applicant filed yet another application dated 26th February 2019 seeking extension of time to file an appeal and stay of execution.
10. That on the 7th day of June 2019 the said application was dismissed by the court.
11. That the three orders of the court have never been appealed against
12. That the applicant was represented by Counsel both in the co-operative tribunal and in this court when the orders were made.
13. That the applicants have since been evicted from the Respondents Land/Factory pursuant to the decree of the co-operative tribunal



14. That the only outstanding issue is the payment of general damages and costs as ordered by the co-operative tribunal.
15. That the applicants have started paying the damages and costs but are yet to pay in full.
16. That the application is clearly an abuse of the court process and is only meant to delay the payment of the decretal sum.
17. That the application is being made 3 years after the tribunal delivered Judgement on 13th July 2017.
18. That there is no discovery of any new matter necessitating the grant of the orders sought.

Analysis and determination

19. I have perused the application by way of Notice of Motion dated 24th June 2020. It is a poorly drafted application.

It does not show under what section of the law its premised. A close reading of it however, does show that it seeks for the setting aside of a decree dated 8th February 2019 and, an order dated 2nd July 2019 which were issued by the Co-operative Tribunal in Nairobi CTC 3 of 2011 between the parties herein.

20. Section 80 of the *Civil Procedure Act* provides for Review thus:-

“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.”

21. Order 45 rule 1 provides:- “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 held and an 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 Judgment to the court which passed the decree or made the order without unreasonable delay.

22. Order 45 rule 2 provides:-

“That an application for review of a decree or order..... shall be made to the judge who passed the decree or made the order sought to be reviewed”

23. The application dated 24/6/2020 was filed in this court. The decree and orders made were by the co-operative tribunal in Nairobi. It is patently clear that this is the wrong forum for the review application. Secondly, the applicant has not brought himself within the conditions set out in order 45 of the CPC.



Thirdly, the decree sought to be set aside /reviewed is dated 8th February, 2019 the order is dated 2/7/2019. The application is dated 24/6/2020. It was not brought timeously and without delay.

24. It is noted that the applicant had made several applications before this court for extension of time to appeal but so far no appeal has been filed. I find this application has no merit and its dismissed with costs to the Respondents.

RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 11TH DAY OF MAY 2023.

HON. JUSTICE MARTIN M. MUYA

JUDGE

In the presence of:

Githui: Applicants

.....Respondent

Court Assistant: Kinyua

30 days R/A.

