



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngungu v Mwengi (Civil Suit 24 of 2006)  
[2023] KEHC 22094 (KLR) (Family) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22094 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**CIVIL SUIT 24 OF 2006**

**EKO OGOLA, J**

**JULY 4, 2023**

**BETWEEN**

**MARGARET MWIKALI NGUNGU ..... APPLICANT**

**AND**

**ELIJAH NGUNGU MWENGI ..... RESPONDENT**

**RULING**

1. The Application before the Court is dated September 15, 2020. The Applicant prays for the following:-
  - a. Spent;
  - b. That the Honorable Court be pleased to review its Orders made on the November 26, 2010 by specifically amending Order 1 thereto by adding the following words after the word Kibwezi, that is to say:

“being Kiboko ‘B’ Settlement Scheme Plot Number 232 and 1260  
(Combined)”
  - c. That the costs of this application be provided for.
2. The Application is based on the grounds set forth therein and the Supporting Affidavit of the Applicant, Margaret Mwikali Ngungu.
3. It is averred that the Judgment on record vesting the plots to the Applicant mentions plots in Kibwezi. After the vesting orders were made, the Applicant avers that he subsequently filed an application for review dated June 3, 2015 to review the Orders dated November 26, 2010, but the said Application was dismissed on the grounds that there is a pending Appeal. The Appeal has since been determined



in favour of the Applicant. The plot Number for the plot in Kibwezi has since been established and unless the Orders sought are granted, the land will be wasted and invaded by trespassers.

4. The Application is unopposed.

### **Determination**

5. I have considered the Application, the Supporting Affidavit and the Annexure. Section 80 gives the power of review and Order 45 sets out the rules. The rules lay down the jurisdiction and scope of review limiting it 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 unreasonable delay.

6. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -

“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.”

7. Order 45 rule 1 of the *Civil Procedure Rules, 2010* provides as follows: -

“1. Any person considering himself aggrieved—

- (1) 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 a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

8. Order (1) of this court’s order dated November 23, 2010 states as follows:

“That an Order be and is hereby issued vesting the suit properties i.e. LR No 15065/17, off Ndalat Road, Karen Hardy, LR No Nairobi/Block 72/361 Onyoka Estate, Langata (House



No C30), the piece of land in Kibwezi and Motor vehicle Registration No KAM 853C to the Petitioner.”

9. Annexed to the Application is a letter dated May 22, 2015 from Chief George M. Nyamai of Kiboko Location, Makindu Division stating that the piece of land in Kibwezi vested to the Applicant is known as Kiboko ‘B’ Settlement Scheme Plot Number 232 and 1260. This is evidence of the discovery of a new and important matter 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.
10. Further the Court of Appeal delivered its judgment on June 5, 2020, and the Applicant filed this instant Application on September 15, 2020. In my view the application was filed timeously.
11. The upshot is that the Application meets the conditions for granting review. I hereby allow the Application dated September 15, 2020. Costs be in the Cause.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2023**

**E.K. OGOLA**

**JUDGE**

