



**FWN v JNW (Civil Case 59 of 2018)
[2023] KEHC 24373 (KLR) (Family) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24373 (KLR)

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

**FAMILY
CIVIL CASE 59 OF 2018**

**MA ODERO, J
OCTOBER 19, 2023**

BETWEEN

FWN APPLICANT

AND

JNW RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated August 25, 2022 by which the applicant FWN seeks the following orders that:-
 - “1. Spent.
 2. Spent
 3. The Judgement issued on August 5, 2022 be reviewed as set out in the supporting affidavit”
2. The application which was premised upon sections 1A, 1B and 3A of the *Civil Procedure Act*, section 24 and 26 of the *Land Registration Act* and order 10 rule 11 and order 45 rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law was supported by the affidavit of even date and the supplementary affidavit dated November 4, 2022 both by the applicant
3. The respondent JNW filed a replying affidavit dated October 26, 2022 opposing the application. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated January 13, 2023 whilst the respondent relied upon her written submissions dated May 8, 2023.



Background

4. The genesis of this application is the Judgement which was delivered by this court on August 5, 2022.

5. In that Judgement the court made the following orders.

“(A) The following properties are hereby declared to be matrimonial property and are to be immediately transferred exclusively to the Plaintiff

1. Plot No5859 – Embakasi Ranching Company Ltd.
2. Plot No5859B – Embakasi Ranching Company Ltd.
3. Plot No2884 – Embakasi Ranching Company Ltd.
4. Plot No 2884B – Embakasi Ranching Company Ltd.
5. Parcel Numbers Nairobi Block 105/6000, 6006, 6007 and 6008 (Ruai)
6. Title No Naromoru Kiamathage Block 1/108 – 3 acres

(B) That the plaintiff has no entitlement to the property known as Jada Plot No 6 Saika Estate.

(C) This being a family matter I make no orders on costs”.

6. The applicant avers that part of the above Judgment/order were irregular with an error apparent on the face of the record.

7. The applicant states that he is not and has never been the registered and/or beneficial owner of any of the properties known as LR. No Nairobi Block 105/6000, 6006, 6007 and 6008, and therefore is not in a position to comply with the orders that he transfer the above properties to the respondent.

8. The applicant is apprehensive that unless the orders for review are granted as prayed he stands to be cited for contempt in respect of orders which he is incapable of complying with.

9. On her part the respondent avers that the current application is merely aimed at denying her the fruits of the Judgment/orders made in her favour. The respondent insists that the Applicant is indeed the owner of the properties in question.

10. The Respondent asserts that records from Embakasi Ranching Company Ltd indicate that the applicant owned a total of twenty (20) plots running from Nos 6001 – 6019. That it is only fair that the four (4) plots be transferred to her as directed by the court.

Analysis and Determination

11. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.

12. 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 Judgement to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”.

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

- “(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 a review of Judgement to the court which passed the decree or made the order without unreasonable delay”.

14. In *Republic v Public Procurement Administrative Review Board & 2 others* (2018) eKLR it was held:-

“Section 80 gives the power of review and order 45 sets out the rules. The rules restrict the grounds for review. 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 be made without unreasonable delay”.

15. The Judgement in question was delivered on August 5, 2022 the current application was filed on August 25, 2022 barely twenty (20) days after delivery of the Judgement. I am satisfied that the application was filed in a timely manner.

16. The applicant submits that he is seeking a review of the Judgement on grounds of an error apparent on the face of the record.

17. In *National Bank of Kenya v Ndungu* (1996) KLR the Court of Appeal stated that:-

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omissions must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provisions of law cannot be a ground for review.” [own emphasis]



18. Similarly, the Indian Case of *Satyanarayan Layminarayan Hegde v Malikarjun Bhavanappa Tirumule* (AIR) 1960 SC 137 the Supreme Court of India held that:-

“An error which has to be established by a long drawn process of reasoning on point whether there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a court of certiorari according to the rule governing the powers of the superior court to issue such a writ”.

19. Therefore, any alleged error on the face of the record must be an error that is self-evident and does not require argument and/or examination to establish.

20. A look at the Judgement of the trial clearly reveals that the applicant in his evidence conceded that Embakasi Ranching Company Plots 5859, 5859B, 2884 and 2884B all belong to the respondent and were registered in her name. The court went on to declare that:-

“Those four (4) Plots being Plot Nos 5859, 5859B, 2884 and 2884B Embakasi Ranching Company are declared to be the exclusive property of the plaintiff and do not form part of the subject matter of this suit”.

21. In the final Judgement the court included amongst the properties to be transferred to the plaintiff (Respondent) “(5) parcel numbers Nairobi Block 105/6000, 6006, 6007 and 6008 (Ruai)”.

22. The applicant now avers that Nairobi Block 105 Plots 6001, 6006, 6007 and 6008 do not belong to him. The applicant has produced copies of title deeds indicating that Nairobi/Block 105/6000 is registered in the name of Jesse Ngotia Karuiki with title having been issued on March 30, 2019.

23. However, no documents have been annexed by the applicant to prove that Plots 6006, 6007 and 6008 do not belong to him. Based on the foregoing I find that the error only existed in respect of Nairobi Block 105/6006 which clearly does not belong to the applicant.

24. Finally, I partially allow this application and I review the Judgment dated August 5, 2022 so as to rectify only item Number (5) on page 23 to read “(5) Parcel Numbers Nairobi Block 105/6000, 6007 and 6008 (Ruai)”.

25. Court is so ordered.

26. Each side to meet its own costs.

DATED IN NAIROBI THIS 19TH DAY OF OCTOBER, 2023.

.....

MAUREEN A. ODERO

JUDGE

