



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 725 OF 2017 (OS)

(Formerly CIVIL CASE NO. 688 OF 2013(OS))

RAPHAEL MUKURUMA MUKURIA.....PLAINTIFF

VERSUS

YIAMPOYO EME KUYU OGUTU &

SILOLE ENE KUYA (Widow/Legal Representatives of the estate of

Kuya Ole Ogoto Liapay – Deceased).....1st DEFENDANT

COUNTY GOVERNMENT OF KAJIADO.....2ND DEFENDANT

RULING

What is before Court for determination is the Plaintiff's application dated the 28th May, 2019 brought pursuant to Order 45 Rule 1 and 2 of the Civil Procedure Rules including sections 1A, 1B, 3, 3A as well as 80 of the Civil Procedure Act; and section 78 of the Land Registration Act. The Applicants seeks for the Court to review, vary and or amend its Rulings made on 11th April, 2018 specifically on the release of the title deed for Kajiado/ Kaputiei South/ 2199 to the Respondents and that there be an order for the removal of an inhibition order against the said parcel of land. The application is supported by the Plaintiff's affidavit. It is opposed by the Defendants who are the widows of the late Kuya Ole Ogutu wherein they insist that the said title deed has to be released and contend that the Plaintiff is in contempt of the Order of the Court.

Both parties filed their respective submissions which they highlighted.

Analysis and Determination

Upon consideration of the application, parties affidavits and submissions, the issues for determination is whether the Court should review and or vary its order dated the 11th April, 2018 on the release of the title for Kajiado/ Kaputiei South/ 2199 to the respondents and for an order to be issued for the lifting of the inhibition from the said land.

Section 80 of the Civil Procedure Act 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."**

Further, Order 45, rule 1 (1) of the Civil Procedure Rules provides as follows: ' **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 judgment to the court which passed the decree or made the order without unreasonable delay.'**

In the case of **MUYODI v INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION AND ANOTHER** **EALR (2006) EA 243**, the Court of Appeal while describing an error apparent on the face of record, held as follows: ' ***In Nyamogo & Nyamogo -vs- Kogo (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined***

precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

In the current case, I note the deceased had already entered into a consent to transfer a portion of the land to the Plaintiff which Consent Order was not implemented as the deceased passed on. It also emerged that the widows has applied letters of Administration Intestate vide Kajiado CM C Succession Cause No. 128 of 2016, and did not take into account the interest of the Plaintiff. This fact was not divulged by the Defendants when the Court was making its Ruling. Further, the Plaintiff also discovered these facts when the Ruling had been delivered. To my mind, discovery of new and important material is a ground that constitutes review. Insofar as the Application was brought albeit late, but since the Plaintiff was to obtain a portion of the land from the said title, in associating myself with the decision cited above, I proceed to review my Ruling and direct that the title for Kajiado/ Kaputiei South/ 2199 be retained by the Plaintiff's Counsel pending the transfer of a portion of the land to the Plaintiff as per the terms of the consent Order entered on 11th July, 2013 and 12th March, 2014 respectively.

On the issue of removal of inhibition I note I had directed the Plaintiff to file a formal application for the same. I hence disagree with the Respondents that I had dealt with the matter. Section 68 and 70 of the Land Registration Act makes provision on registration and removal of inhibitions.

In the instant case, I note there is an order of Court granting the Plaintiff an interest in the land. Further, the registration of the inhibition by the Defendants cannot allow the Plaintiff to proceed with the implementation of the said Order. From the legal provisions I have cited above, I note inhibitions are entered for a particular period and can be removed. Since the Defendants are the legal representatives of the deceased estate, I see no reason why they should inhibit the land to block the implementation of an Order of the Court. In the circumstances, I will direct that the Land Registrar, Kajiado do proceed to remove it to enable the Plaintiff obtain the 80 acres of land which was to be hived off land parcel number Kajiado/ Kaputiei South/ 2199. Since I have already made an order reviewing my ruling of 3rd April, 2019, I see no reason to grant an order for stay of execution of the said ruling.

In the circumstance, I find the application merited and will allow it.

Costs to be in the cause.

Dated and delivered at Kajiado on 3rd February, 2020.

CHRISTINE OCHIENG

JUDGE