



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

MILIMANI LAW COURTS

ELC NO 1172 OF 2016 (OS)

**IN THE MATTER OF CLAIM FOR TITLE TO LAND BY ADVERSE POSSESSION
OVER A PORTION OF LAND MEASURING 4 ACRES KNOWN AS L.R. NO. 6845/148
EMBAKASI, NAIROBI**

BETWEEN

MWIHIKE FARMERS COMPANY LIMITEDPLAINTIFF

VERSUS

FRANCIS KAIGUA KARITU.....1ST DEFENDANT

GITHUNGURI NJIRU FARM (1966) LIMITED.....2ND DEFENDANT

AND OMEGA COMMERCIAL SERVICES LTD.....1ST INTERESTED PARY

JOEL N. ONCHWATI

CONSOLATA W. MUREITHI

JEREMIAH G WAMBUBU (*Suing as the officials of springfield (148) Residents*

***Welfare Association*).....2ND INTERESTED PARTY**

RULING

1. This application is in respect of LR NO 6845/148 Embakasi. On the 20th March 2024 Judgement was entered in favour of the Plaintiff in the following terms;

- a. Mwihike Farmers Company Limited is hereby declared to have acquired a title by adverse possession to the suit premises being a portion measuring four (4) acres out of L.R. No. 6845/148 and an

order of permanent injunction is hereby issued restraining the Defendants from interfering with the Plaintiff's or its members possession and title to the suit property.

- b. That the registration of FRANCIS KAIGUA KARITU as proprietor of a portion measuring for (4) acres out .R. No. 6845/148 and or an any other person deriving title from GITHUNGURI NJIRU FARM (1966) LIMITED AND PETER KARITU KAIGUA and the Defendants out of the suit property known as L.R. No 6845/140 be and is hereby cancelled forthwith and the Registrar of Titles is hereby directed to rectify the register to enter and issue title in the name of the Plaintiff as the registered proprietor of a portion measuring 4 acres out of L.R. No 6458/148 in place of the Defendants or anyone deriving title from the Defendants.
 - c. Each party to bear own costs of the suit.
2. The Applicant who was the 1st Interested Party has filed the instant application seeking to review the Judgement on the basis that it filed a Replying Affidavit and filed submissions in the matter. That notwithstanding their participation, the learned Judge did not pronounce himself on the issues raised by the 1st Interested Party. The 1st Interested Party in the application dated 6th September, 2024 thus seeks the following orders;
- a. That this Honourable Court be and is hereby pleased to certify this matter as urgent and service be dispensed with in the first instance.
 - b. That this Honourable Court be pleased to review its Judgement dated 22nd March 2024 and make a finding on the claim by the 1st Interested Party as articulated in its Replying Affidavit dated 21st September,

2020 as read together with its final submissions dated 29th February, 2024.

c. That costs of this application be costs in the cause.

3. The 1st Interested Party/ Applicant avers that the court had directed that its Replying Affidavit be treated as pleadings hence the court should have considered its evidence and made a finding on its claim.
4. In the Replying Affidavit the 1st Defendant opposes the application. He states that he is the registered owner of the suit property which was transferred to him by his late father. That following the Judgement there is an appeal which was filed in the Court of Appeal 397 of 2024. That the 1st Interested Party/ Applicant can raise any issues in the Court of Appeal.
5. The court directed that the application be canvassed by way of written submissions. Only the Applicant complied. Counsel submitted on two issues namely on the role of an interested party and secondly whether the court has power to review. I will consider these two issues.
6. On the issue of whether the court failed to make a finding on the issues the interested party raised, it is the interested party's submission that the court failed to take into account the Replying Affidavit filed by the interested party which was that 35 % of the property was held in trust for him hence this should have been considered in making the final determination.
7. The courts Judgement in paragraph 52(b) of the judgement pronounced that the registration of the 1st defendant as the proprietor of the suit property and

any other persons depriving title from out of the suit property was to be cancelled and the property registered in the name of the Plaintiff. This was a finding which included the interested party.

8. As to whether this court can review this finding, the powers of a court on review are very limited. The courts power to review is exercised under Section 80 of the Civil Procedure Act 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

9. Further, Order 45, Rule 1 provides:

‘...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’

10. An applicant must that establish that new and important evidence has emerged that could not be produced when the matter was first heard or that there is a mistake or error apparent on the face of the record or lastly that there is sufficient cause.

11. In the instant cause, the applicant cites sufficient cause as reason for the court to review the Judgement. Sufficient cause is rightly not defined by the law but is left to the court to determine based on the individual circumstances of each case. This power although wide must be exercised within the law and always to do justice between the parties. A court of concurrent jurisdiction has made a finding that does not favour the applicant herein. This does not amount to sufficient cause for the court to reconsider the Judgement. This court does not have jurisdiction to reopen the case afresh. More so considering that there is a pending appeal. There was no new evidence produced neither was it established that there is a self-evident error on the face of the record.

12. The upshot of the foregoing is that the applicant has not satisfied the threshold for review. The application is thus dismissed with costs.

Ruling Signed dated and delivered via Microsoft teams this 4th day of December 2025

JUDY OMANGE

JUDGE

In the presence of

Court Assistant Catherine

Mr Gichuru for Interested Party

Mr Chege hb Mr Mansur for Respondent