



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 107 OF 2012**

FRED K. SABAL.....1<sup>ST</sup> PLAINTIFF  
RICHARD KIPSOL.....2<sup>ND</sup> PLAINTIFF  
DANIEL KAPKARA.....3<sup>RD</sup> PLAINTIFF  
DANIEL CHEMAKET.....4<sup>TH</sup> PLAINTIFF  
ELIUD SICHEL.....5<sup>TH</sup> PLAINTIFF

**VERSUS**

**DISTRICT LAND ADJUDICATION &**

SETTLMENT OFFICE, TRANS-NZOIA.....1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT  
PETER CHEMASWET.....3<sup>RD</sup> DEFENDANT  
NATHAN JINET NDIWA.....4<sup>TH</sup> DEFENDANT  
JAMES BOIYO BELLO.....5<sup>TH</sup> DEFENDANT  
ROBINSON CHESBOI.....6<sup>TH</sup> DEFENDANT  
BARNABA K. KITEYWO.....7<sup>TH</sup> DEFENDANT  
WILFRED M. CHEPROT.....8<sup>TH</sup> DEFENDANT  
JUMA WILLIAM CHEMOSIT.....9<sup>TH</sup> DEFENDANT  
PETER KIBARAK KIBET.....10<sup>TH</sup> DEFENDANT  
JOHN KAPKARA MASAI.....11<sup>TH</sup> DEFENDANT  
STANLEY KIPKOECH.....12<sup>TH</sup> DEFENDANT

**AND**

**STEPHEN YEGO LANG'AT &**

**ANTHONY KEMEI LANG'AT**

*(Suing as administrators of the Estate of the late*

**RULING**

1. The application dated **13/3/2019** and filed in court on the same date has been brought by the objectors/applicants who seek the following orders:-

(1) ...spent

(2) ...spent

(3) ...spent

(4) **The judgment made by the court on 31/1/2019 be reviewed so as to remove the declaration that Peter Chemaswet is the owner of Plot 703 in Kitalale settlement Scheme Phase II.**

(5) **That costs of this application be provided for.**

(6) **That such further and other relief be granted as this court deems fit and expedient in the circumstances.**

2. The application is brought under provisions of **Section 1A, 1B, 3, 3A, 5, 6, 7, 34, 63(e) and 80 of the Civil Procedure Act, Section 18, 19 and 22 of the Environment and Land Court No. 19 of 2011, Section 134 (7) of the Land Act No. 6 of 2012, Article 40 of the Constitution of Kenya, Order 1 rule 1 and 10, Order 22 Rule 22, Order 31 rule 2, Order 45 rule 2 and Order 51 rule 1 of the Civil Procedure Rules 2010.**

3. The grounds on which the said application is made are that on **24/9/2012** a grant of Letters of Administration Intestate was issued in **High Court Succ. Cause No. 124 of 2012** to the Objectors/applicants herein for administration of the estate of the late **Lawrence Lang'at Kipsoi** which grant was later confirmed on **9/10/2014**, bequeathing the **Plot No. 703 Kitalale Settlement Scheme Phase 11** to the objectors to hold in trust for themselves and all other beneficiaries of the estate; that in 1996 the objector's/applicant's father settled the applicants in plot No. 703 Kitalale Settlement Scheme Phase 11 and they established a home thereon and have been occupation of that plot since then and are still in occupation to date; that **28/2/2019** there was an attempt to evict them from the plot and that on that day, they learnt of the judgement and decree of this suit which they had never been notified before then; that their father was not enjoined in the proceedings and therefore their right to a fair hearing was adversely affected; that the 3<sup>rd</sup> defendant has been aware of the interests of the applicants on the land but deliberately failed to involve them in the suit; that in the judgment delivered by this court on **31/1/2019** the 3<sup>rd</sup> defendant had been cited by the court as having stated under oath during trial that his claim had changed and it was against the said late Lawrence Kipsoi, and that he admitted that neither the said late Kipsoi nor his wife were enjoined in this case; that the judgment delivered by this court on **31/1/2019** declared that the said Peter Chemaswet (3<sup>rd</sup> defendant/respondent) is the owner of Plot No. 703 Kitalale Settlement Scheme Phase 11; that the 3<sup>rd</sup> defendant did not move the court for such orders of joinder which omission was deliberate and calculated to secretly and unlawfully obtain a decree from this court countering that which the High Court had already decreed in the **High Court Succ. Cause No. 124 of 2012**; that **Section 7** of the Civil Procedure Act ousted the jurisdiction of this court to the extent of re-determining the issue of ownership of the said plot No. 703 in Kitalale Scheme; that the objectors and the beneficiaries and dependants of the late Lawrence Kipsoi have been in occupation and use of the suit property since the year 1996 and the 3<sup>rd</sup> defendant knew well that any claim for recovery of the suit property or any part thereof has already been caught up by limitation of action; that on **28/2/2019** the 3<sup>rd</sup> defendant in company of a surveyor from the office of the 1<sup>st</sup> defendant went to Kitalale Settlement Scheme and identified the objectors' houses and other permanent structures and on or about **18/3/2019** he demolished and evicted the beneficiaries and dependants of the late Lawrence Kipsoi and that the 3<sup>rd</sup> defendant or any other respondents will not be prejudiced if the orders sought herein are granted.

4. The application is supported by the affidavit of the applicant sworn on **13/3/2019**. That affidavit reiterates the same matters set out in the grounds above.

5. The application dated **13/3/2019** is unopposed.

6. No submissions were filed by any of the parties despite the order of the court.

7. The applicants' claim to plot No. 703 is based on a confirmation of letters of administration in respect of the estate of their deceased father. The applicants are not seeking to have the suit reopened for the purpose of demonstrating that their father had either purchased the suit land from the 3<sup>rd</sup> respondent or had been allocated the land by the Settlement Fund Trustees. On the other hand the judgment in this suit is based on the evidence that was brought to the fore by the parties who were involved.

8. It is noteworthy that this court based its decision on the evidence of the 1<sup>st</sup> defendant in the suit regarding the persons recognized by the 1<sup>st</sup> defendant as having an interest in the land. Paragraphs **43** and **44** of the judgment of this court read as follows:

**“I therefore find that in accordance with that evidence, the persons whose names are listed alongside the plots numbers listed herein below are the persons recognized by the 1<sup>st</sup> defendant as having interest in those plots:**

**i. 697, 1.0ha Wilfred M. Cheprot**

ii. 699, 1.0ha Juma William Chemosit

iii. 700, 1.0ha Robinson Chesbol

iv. 702, 1.0ha Peter Kibarak Kibet

v. 703, 1.0 Ha Peter Chemaswet

vi. 704, 1.0ha Barnabas K. Kiteywo

vii. 707, 1.0ha Nathan Jindet Ndiwa

viii. 708, 1.0ha James Boiyo Bello

ix. 712, 2.0ha John Kapkara Masai

x. 714, 2.0ha Stanley Kipkoech

**This concludes this long running dispute. As stated before the court cannot proclaim these to be the legal owners as it was revealed before the conclusion of the suit that the land is still undegazetted forest land.”**

9. The application for orders of review must be based on the provisions of **Section 80** of the **Civil Procedure Act** and **Order 45 Rule 2** of the **Civil Procedure Rules**. I must therefore examine the application to find out whether the same has satisfied the conditions required for the issuance of an order of review under the provisions of the law.

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

11. **Order 45 rule 2** of the **Civil Procedure Rules** states 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 review of judgement to the court which passed the decree or made the order without unreasonable delay.”**

12. The parameters provided by the law within which an applicant must bring himself for the grant of review are therefore in brief as follows:

**(a) Where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the decree was passed or the order made;**

**(b) Some mistake or error apparent on the face of the record, or**

**(c) any other sufficient reason.**

13. The grounds for review given in the instant application are that the applicants had already obtained confirmation of grant to the estate of their late father bequeathing the suit land comprised of in **Plot No 703 - Kitalale Settlement Scheme** to them; that they have established a home thereon; that they only learnt of this suit on 28/2/2019 when an attempt to evict them therefrom occurred and their father had not been enjoined in the proceedings yet the suit land was declared to belong to the 3<sup>rd</sup> defendant whom they accuse of improper dealings so as to acquire the land and that the succession cause decision had already ousted the jurisdiction of this court to hear and determine the matter.

14. Do any of the above grounds fall within the realm of grounds for review envisaged by the law as set out hereinbefore?

15. In the case of **National Bank of Kenya Ltd vs Ndungu Njau (1996) KLR 469 (CAK)** at Page 381 the Court Of Appeal stated as follows:-

**“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 omission 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 provision of law cannot be a ground for review.”**

16. Contrary to the observation by the Court of Appeal in the cited decision that the error or omission must be self-evident and should not require an elaborate argument to be established, the applicants have laboriously attempted to set up a case for review by drawing facts from without the judgment issued by this court. These are that there was a confirmation of grant that gave them the land and that they have been in occupation thereon since 1996 to date; they also aver that they were not aware of the suit till the attempt to evict them from the suit land occurred. They also cast aspersions on the conduct of the 3<sup>rd</sup> defendant for apparently planning to obtain a decree which would countermand the orders already issued in the succession cause.

17. In the case of **Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers [2016] eKLR**, the reasons given for the proposed review were that there was in existence various court orders staying cases concerning properties insured by United Insurance Company Ltd by the time the order sought to be reviewed was issued. The court (Mativo J) observed that the crucial question to resolve is whether or not the said ground falls within the scope of **Order 45 Rule 1**. He found that it did not.

18. I am also not inclined in the present application to believe that a certificate of confirmation of grant issued by the High Court in succession proceedings in which the defendants herein were not participants is sufficient to occasion a review of the judgment dated **31/1/2019** as suggested in the application. Neither would the assertion that this court's jurisdiction was ousted by the decision in the succession cause which this court was not aware of at the time of the delivery of its judgment.

19. In any event all the problems experienced by the applicants originate from their reliance on the decision in the **High Court Succession Cause Number 124 of 2012**. It is observable that though the applicants claim they are entitled to the land in the said succession cause no clear narrative independent of the orders in the succession cause has been put forward as to how their deceased father obtained the land in question.

20. A litigant's version that commences at the succession cause stage should not galvanize this court into issuing an automatic order of review of a judgment based on evidence that included production of official records by the officer of government charged with their custody to establish who was allotted the suit land.

21. The matters set out by the applicants are prescient of the possibility of long and drawn out arguments that do not accord well with the established position that proper grounds of review do not require the submission of such arguments for them to be established.

22. In my view the applicants' remedy lies in an appeal.

23. Though the application is not opposed I find no merit in it and I hereby dismiss it with costs.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of September, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**30/9/2019**

Coram:

Before: Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Wanyama for 2<sup>nd</sup> - 5<sup>th</sup> plaintiffs

Mr. Bororio holding brief for Ngeywa for 3<sup>rd</sup> and 6<sup>th</sup> defendants

Mr. Kuria for 1<sup>st</sup> and 2<sup>nd</sup> defendants

N/A for 6<sup>th</sup> - 12<sup>th</sup> defendants

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/9/2019**