



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L PETITION NO. 4 OF 2016

(Formerly High Court Petition No. 7 of 2012)

**IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT OF THE PETITIONERS' CONSTITUTIONAL RIGHTS
UNDER ARTICLE 19, 20, 21, 22, 23, 35, 40, 47 AND 165 OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

SIRIKWA SQUATTERS GROUP PETITIONERS

VERSUS

THE COMMISSIONER OF LANDS..... 1ST RESPONDENT

THE CHIEF REGISTRAR OF TITLES 2ND RESPONDENT

DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 3RD RESPONDENT

DIRECTOR OF SURVEY 4TH RESPONDENT

DISTRICT LANDS OFFICER, UASIN GISHU DISTRICT 5TH RESPONDENT

LONRHO AGRI BUSINESS (EA) LTD 6TH RESPONDENT

MARK KIPTARBEI TOO 7TH RESPONDENT

DAVID K. KORIR 8TH RESPONDENT

HIGHLAND SURVEYORS LTD 9TH RESPONDENT

KENNEDY KUBASU 10TH RESPONDENT

RULING

1. The petitioners/applicants made the application dated 28.3.2017 praying that the judgment dated 9th February, 2017 be reviewed to the extent that the members of petitioner are only entitled to ownership of properties known as L. R. No. 9606, 9607, 9608, 745, 742/2, 7739/R, 12393, 10793 and 10794 all in Uasin Gishu District. In particular, and for avoidance of doubt, there be a declaration that the membership of the petitioners is also entitled to ownership of properties known as L. R. N. 7913 (now Block 9/22), 11481, 8275 and 9609.

2. That the 1st, 2nd, 3rd, 4th and 5th respondents be directed to perform their constitutional duties and forthwith issue title deeds for the properties set out in the court's decision of 9th February, 2017 together with properties known as L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609 in the name of the petitioner's membership.

3. That the 1st, 2nd, 3rd and 4th respondents be directed to cancel any allocation or resultant titles emanating from the properties known as L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609. That the costs of this application be provided for. The application is based on grounds that the court delivered its judgment on 9th February, 2017 allowing the petition and found that by a letter dated 28th October 1998, the President of the Republic of Kenya (Retired) approved an application by members of the petitioner for the allocation of properties known as L. R. No. 9606, 9607, 9608, 745, 724/2, 7739/7R, 10793 and 10794.

4. The court held that the allocation of the said properties to the membership of the petitioners was subsequently confirmed by the Commissioner of Lands and other Government departments which represented that the said properties were given a direct approval to the membership of the petitioner by the President and was meant to settle the squatters group that included farm hands and labourers as well as their families previously engaged by M/s Lornho Agribusiness Ltd (EATEC Ltd).
5. The court made a finding that the petitioner's members had a legitimate expectation that they would be registered as the owners of the properties known as L. R. No. 9606, 9607, 9608, 745, 742/2, 7739/7R, 12398, 10793 and 10794 in Uasin Gishu District.
6. As a result of the aforementioned findings, the court *inter alia* ordered the 1st to 5th respondents do perform their constitutional duties and issue titles deeds for L. R. No. 9606, 9607, 9608, 745, 742/2, 7739/7R, 12398, 10793 and 10794 in the name of the petitioner for purposes of allocation of the said properties to the membership of the petitioner.
7. The cancellation of all resultant titles or any title deed issued or emanating from L. R. No. 9606, 9607, 9608, 745, 742/2, 7739/7R, 12398, 10793 and 10794 all in Uasin Gishu to the 6th and 7th Respondents as well as all other beneficiaries and the registers be rectified accordingly.
8. After the judgment was delivered, the membership of the petitioner reviewed the said decision and established that the properties known as L. R. No. 7913, Block 9/22, 11481, 8275 and 9609 all in Uasin Gishu District (hereinafter the suit properties) 2 which formed part of the properties that had been allocated to the membership of the petitioner by the President on 28th October, 1998 had not been dealt with in both the petition and the decision of court.
9. The suit properties constitute part of the properties that were allocated by the president to the membership of the petitioner by the President on 28th October, 1998. Various Government Departments including the Commissioner of Lands have in the past represented to the membership of the petitioner that they are entitled to ownership of the suit properties just like they have done in relation to properties known as 9606, 9607, 9608 745, 742/2, 7739/7R, 12398, 10793 and 10794 all in Uasin Gishu.
10. The documents in support of the instant request were readily available to the extent that the issues herein qualify as either clerical or typographical errors arising from accidental slip or omission and therefore for amendments by the court on its own motion pursuant to Section 99 of the Civil Procedure Act Cap. 21, Laws of Kenya.
11. It is in the interest of justice that the judgment of the court be reviewed so as to include a finding that the membership of the petitioner is entitled to ownership of the properties known as L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609 all in Uasin Gishu, the same having been allocated to the membership of the petitioner under similar circumstances as the properties that formed the subject of the petition and which had crystallized into a judgement.
12. It is argued that it is just that the judgment be reviewed as the learned judge would have arrived at the same conclusion had the membership of the petitioner pleaded or otherwise sought ownership of the properties known as L. R. No. 7913 (now Block 9/22) 11481, 8275 and 9609 all in Uasin Gishu. And that the court has the inherent jurisdiction to recall and review the judgment of 9th February, 2017 in order to give effect to its manifest intention. The circumstances of this case dictate that that the court recalls its decision so as to give effect to its manifest intention and so that the full fruits of that litigation can be enjoyed by the petitioners. It is fair and just that the application be heard immediately and the orders sought be granted. At all events, the said orders are necessary for the end of justice to be served.
13. In the supporting affidavit of Benjamin Chepng'otie Ronoh, he states that upon the delivery of the judgment on 9th February 2017 the membership of the petitioner reviewed the said decision and established that the properties known as LR No. 7913 (now Block 9/22), 11481, 8275 and 9609 all in Uasin Gishu District (hereinafter the suit properties), which formed part of the properties that had been allocated to the membership of the petitioner by the president, which allocation was subsequently confirmed by other Government Departments including the Commissioner of Lands had in error not been dealt with in both the petition and the decision of the court. The said error was clerical occasioned by accidental slip or omission.
14. He depones that the suit properties were initially registered in the name of Plateau Wattle Company Limited, just like the properties that formed the subject of the court decision. That the suit properties together with other properties that formed the subject of the court decision were subsequently transferred by way of sale to an entity known as East Africa Tanning Extract Company between 1964 — 1965. Subsequent to the transfer of the suit properties to the East Africa Tanning Company, the company changed its name in the year 1992 to EATEC. EATEC changed its name EATEC Limited in 1995. EATEC Limited changed its name to Lornho Agro Industries (East Africa) Limited in 1999. Lornho Agro Industries (East Africa) Limited changed its name to Lornho Agribusiness (East Africa) Limited in 2000.
15. That Lornho Agribusiness (East Africa) Limited surrendered to the Government of Kenya all grants in respect to the properties that formed the subject of the petition as well as the suit properties, being L. R. No. 7913, Block 9/22, 11481, 8275 and 9609 for purposes of settling the membership of the petitioner.
16. The suit properties constitute part of the properties that were allocated by the Retired President to the membership of the petitioner by the President on 28th October, 1998. Various Government Departments including the Commissioner of Lands have in the past represented to the membership of the petitioner that they are entitled to ownership of the suit properties just like they have done in relation to properties known as 9606, 9607, 9608, 745, 742/2, 7739/7R, 12398, 10793 and 10794.
17. The legality of the title held by the 6th, 7th and 8th respondents and their alleged beneficiaries over the properties known as L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609 was in error not pleaded in the petition by reason of which the court did not make a determination thereof.
18. That had the said properties, being L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609 been pleaded in the petition, it is likely that

the court would have arrived at the same conclusion. The judgement of the court covered the entire substratum of the case.

19. The deponent believes that it is in the interest of justice that the judgment of the court be reviewed so as to include a finding that the membership of the petitioners was also entitled to ownership of the properties known as L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609 all in Uasin Gishu.

20. That it is just that the judgment be reviewed as the court would have arrived at the same conclusion had the membership of the petitioner pleaded or otherwise sought ownership of the properties known as L. R. No. 7913 (now Block 9/22), 11481, 8275 and 9609 all in Uasin Gishu.

21. That he verily believes that there are sufficient reasons to review the judgment the court to include a finding that the membership of the petitioner is entitled to ownership of properties known as L. R. No. 7913, Block 9/22, 11481, 8275 and 9609.

22. That he verily believes that the application herein should be allowed so as to save on judicial time, avoid a possibility of the court re-writing its own decision and ensure that the membership of the petitioner enjoy the full fruits of the judgement. At any rate, nothing limits the inherent powers of the court to issue such orders as are necessary for the ends of justice.

23. The 6th and 8th respondents argue that the orders sought cannot be granted by way of review as the court lacks jurisdiction. Moreover, that granting the order would alter the judgment. The 7th defendant equally argues that the court cannot be moved by way of review as there is an appeal. The 9th and 10th respondents equally argue that the court lacks jurisdiction to entertain an application for review as there is a pending appeal.

24. I have considered the application, the affidavits on record and the submissions of all parties and do find that the application is premised on Section 80 of the civil procedure act cap 21 laws of Kenya which gives a Court power to review its own order where an appeal has not been preferred against its order for sufficient cause. The section is supported by order 45 of the Civil Procedure Rules that provide as follows: -

1. **“(45) (1) Any person considering himself aggrieved-**

ii. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

iii. 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 judgment to the court which passed the decree or made the order without unreasonable delay.”

25. In this matter, there is already an appeal pending in the Court of Appeal at Eldoret being Eldoret Civil Appeal no 15 of 2017 where the petitioners are respondents whereas the respondents herein are the appellants and therefore, the court lacks jurisdiction to entertain the application. Furthermore, allowing a review as prayed will substantially alter the judgment by the court which will greatly prejudice the respondents/ appellants as the new parcels of land will require production of the searches which will require hearing of new evidence. Moreover, **it is apparent that the applicants did not exercise due diligence, as the facts were within their knowledge and could have been produced by them at the time when the decree was passed or the order made and** therefore, the application does not meet the test in order 45 of the Civil Procedure Rules 2010. I do find that the application is not merited and is dismissed with costs.

Dated and delivered at Eldoret this 11th day of June, 2018.

OMBWAYO

JUDGE