



Jonco Company Limited v Mirii & 5 others (Environment & Land Case E80 of 2023) [2024] KEELC 240 (KLR) (29 January 2024) (Ruling)

Neutral citation: [2024] KEELC 240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E80 OF 2023
EK WABWOTO, J
JANUARY 29, 2024**

BETWEEN

JONCO COMPANY LIMITED PLAINTIFF

AND

W MIRII 1ST DEFENDANT

MAHAD ADAN 2ND DEFENDANT

MOHAMED 3RD DEFENDANT

KEVIN NOGU 4TH DEFENDANT

ABDULRAHMAN MOHAMED 5TH DEFENDANT

ISKAASHATO KENYA LIMITED 6TH DEFENDANT

RULING

1. This court pursuant to its ruling delivered on 15th January, 2023 issued inter alia the following order: -
 - “ That there shall be no eviction of either party from the suit property.”
2. The 6th Defendant being aggrieved by the said order promptly moved this court vide its application dated 18th January, 2024 seeking the following orders: -
 1. Spent...
 2. That the Ruling and Order of this Court and in particular Order (ii) of the same issued on 15th January, 2024, has occasioned a manifest absurdity and ambiguity in the operation of law and the administration of justice.



3. That the 6th Defendant has and is in possession of the suit property and as such the said order against eviction cannot logically apply to any other party other than the 6th Defendant and as such the said order should have only referred to the 6th Defendant and not any other party.
 4. That the ambiguity created by the framing of Order (ii) could be construed to mean that any party including the plaintiff could acquire access and possession of the suit property and use the said order to protect themselves from any future eviction;
 5. That the manner Order (ii) is framed shall inevitably cause chaos and confusion and is likely to escalate the situation to illegal forms of acquiring the suit property by the Plaintiff who has never had possession of the same and lays no proper legal claims to it.
 6. That the issues raised in the Annexed Notice of Motion are weighty and question whether the Ruling and Order of this Court issued on 15th January, 2024 was manifestly unjust, ambiguous and absurd.
3. The application was supported by the affidavit sworn on 18th January, 2024 by Adan Mohamed Elmi a director of the 6th Defendant. It was deposed that the ruling and order of this court and specifically the order against eviction by either party from the suit property pursuant to the ruling delivered by this court on 15th January, 2024 has occasioned a manifest absurdity and ambiguity in the operation of law and administration of justice.
 4. It was averred that the 6th defendant has and is in possession of the suit property and as such the said order against eviction can't logically apply to any other party other than the 6th defendant. It was deposed that the said order ought to have been specific that the 6th Defendant should not be evicted from the suit property.
 5. In supporting the application, the 6th Defendant also averred that the Plaintiff has never been in possession of the property and that the said position is uncontroverted.
 6. The Plaintiff opposed the application vide a replying affidavit sworn on 23rd January, 2024 by Mohamed Maalim a director of the Plaintiff Company.
 7. It was deposed that the orders issued by the court on 15th January, 2024 are neither ambiguous nor absurd and that the 6th Defendant has been seeking to occupy the property which is not developed. The Plaintiff also averred that the 6th Defendant if aggrieved by the orders of the court ought to have filed an appeal instead of seeking for an order of review.
 8. The application was canvassed by way of oral submissions made by Counsel for the parties.
 9. During the plenary hearing of the application Learned Counsel Mr. Hussein for the 6th Defendant relied on the Supporting affidavit filed on behalf of the 6th Defendant and added that the court has powers to review the orders to clarify any ambiguity. It was submitted that the replying affidavit of the Plaintiff sworn on 18th December, 2023 at paragraph 17 had indeed confirmed that the 6th Defendant was in possession of the suit property. Specific reference was made to paragraph 17(b) of the said replying Affidavit. It was also argued that if the said orders are not reviewed, the plaintiff will forcefully occupy the property.



10. The application was also supported by the 2nd and 5th Defendants through oral submissions made by Learned Counsel Mr. Mworira and Learned Counsel Mr. Omar respectively.
11. Learned Counsel Mrs. Kariuki while submitting on behalf of the plaintiff opposed the said application and relied on the Plaintiff replying affidavit sworn on 23rd January, 2024. She also added that the application does not meet the threshold for review since the applicant is not in possession of the property. She also submitted that the orders earlier issued by this court were clear and sufficient to protect the suit property.
12. The Court has considered the application, rival affidavits filed and oral submissions made by Counsel on behalf of the parties. The main issue for consideration is whether this court should proceed to review order number 2 of its ruling delivered on 15th January, 2024 to the effect that there should be no eviction specifically as against the 6th defendant.
13. Order 45, Rule 1(b) of the [Civil Procedure Code](#) is clear that for the court to review its decision, certain requirements should be met. This section 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 judgment to the court which passed the decree or made the order without unreasonable delay.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

14. The aforesaid rule is based on section 80 of the [Civil Procedure Act](#), Cap. 21 Laws of Kenya which states 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.”



15. Under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously.
16. In the instant application the 6th Defendant has pleaded with the court that as it stands any part to this suit may take possession of the suit property to its detriment should the orders sought not be granted. It was also argued that the said orders may create an opportunity for the Plaintiff to forcefully take possession of the property and use it against any eviction in the future.
17. The Plaintiff on the other hand, maintained that it is in possession of the suit property and that the orders were clear that no party including the 6th Defendant will be evicted.
18. The Court has carefully considered the application and the affidavits filed by the applicant the plaintiff herein. It is evident that the 6th Defendant has made a strong case demonstrating that it is in possession of the suit property and hence the need to have the order issued on 15th January, 2024 reviewed to protect the it and specifically from eviction in the suit property.
19. The Court has also considered the replying affidavit sworn by the Plaintiff and whereas it is deposed that the Plaintiff has been in occupation of the suit property, the plaintiff has not demonstrated and or provided this court with any evidence of its occupation. The Plaintiff has also not demonstrated any prejudice it will suffer should the orders sought be granted.
20. In view of the forging, this court shall proceed to review its orders issued on 15th January, 2024 and in particular Order Number 2 thereof to the effect that; there shall be no eviction of the 6th defendant from the suit property pending the hearing and determination of this suit.
21. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF JANUARY, 2024.

E.K. WABWOTO

JUDGE

In the presence of: -

Mrs. Kariuki for Plaintiff.

Mr. Mworira for 2nd Defendant.

N/A for other parties.

Court Assistant: Caroline Nafuna.

