



**Kamau & another v Karuga & another (Environment & Land Case  
267 of 2018) [2024] KEELC 1135 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1135 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 267 OF 2018**

**JG KEMEI, J**

**FEBRUARY 28, 2024**

**BETWEEN**

**LUCY WAMBUI KAMAU ..... 1<sup>ST</sup> PLAINTIFF**

**PETER KIBE KAMAU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LEONARD NGANGA KARUGA ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KIAMBU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Applicant brings this Application under order 45 rule 1, 2 & 3 of the [Civil Procedure Rules](#) and other enabling provisions of the law.
2. In his Application dated 3/4/2023 presented to the Court on 26/4/2023, the 1<sup>st</sup> Defendant/Applicant, Leonard Ng'ang'a Karuga, seeks review of the Judgment of the Court delivered on 29/4/2021 and in its place, the Court be pleased to replace the said Judgment with one of its own, dismissing the Plaintiffs' suit. In the alternative the Applicant prays for retrial of the suit and costs of the Application.
3. The Application is based on grounds that the Plaintiff (sic) has discovered new and important matters which despite due diligence, could not be discovered during trial; there are errors apparent on the face of the record and there exists sufficient grounds to warrant this Court to review the Judgment.
4. In his Affidavit in support of the Application sworn on even date, the Applicant averred that there was a previous suit, Limuru SPRM Civil suit no. 76 of 2016 between the Plaintiffs herein and the previous owner of the suit land (James Ngugi Mungai) which would have been a major factor in determining whether or not adverse possession was proven. Copies of the suit pleadings are annexed as LNK-1. That at the time of hearing this matter, the Applicant had tried to trace the person who sold the suit land herein, Kabete/gathiga T.180 in vain. That on 30/8/2022 the Applicant met James Ngugi Mungai



who swore an Affidavit marked LNK-2 narrating his dealings with the Plaintiffs prior to selling the suit land.

5. That upon perusal of the Plaintiffs' pleadings, there is self-admitted assertion of the Applicant's true ownership in the evictive (sic) actions conducted by the Applicant against the Plaintiffs, an important factor missed by this Court. Further he avowed that the Plaintiffs' suit was incompetent for want of compliance with order 37 (2) of the Civil Procedure Rules and the suit (Originating summons) herein purported to enforce Section 17 of the Land Acquisition Act whereas this was not a recovery suit.
6. The Application is opposed by the Plaintiffs through the 2<sup>nd</sup> Plaintiff, Peter Kibe Kamau, who swore a Replying Affidavit dated 29/5/2023. Refuting the Applicant's averments, he deponed that the instant Application is vexatious and an abuse of the Court process aimed at frustrating the Plaintiffs from enjoying the fruits of their Judgement. That the Application does not meet the threshold of order 45 Civil Procedure Rules and the Applicant has not adduced any new matter or evidence to call for this Court's intervention. That the said Limuru case was filed by James Ngugi Mungai in 2016 and later sold the suit land to the Applicant in October 2018. He contended that the said James Ngugi Mungai attended Court to testify in support of the Applicant but failed to disclose the existence of the Limuru case. Copies of the green card evidencing the said transfer is attached and marked PKK1 and Originating Summons filed in 5/11/2018 marked PKK2.
7. In addition, the deponent affirmed that himself, the Applicant and James Ngugi Mungai live in the same Gathiga village and therefore the claim that James Mungai could not be traced is but a lie.
8. That indeed James Ngugi was listed as the Applicant's witness in the List of Witnesses dated 19/2/2019 annexed as PKK3. That in any event, the deponent contended that the said Limuru suit would not have had any bearing on this Court's Judgment as claimed. It was argued by the deponent that there is no error apparent on its face and no sufficient cause has been demonstrated.
9. Further the Respondent contended that the Limuru case does not constitute a new and important matter because the Applicant was not a party to the suit; the Limuru suit was dismissed on the 11/3/2020 for want of prosecution.
10. The Respondent further accused the Applicant for inordinate filing of the Application and therefore he is undeserving of the Court's discretion. He prayed for dismissal of the Application with costs.
11. On 29/5/2022 directions were taken for parties to canvass the Application by way of submissions. The Plaintiffs opted to rely on their Replying Affidavit. The Applicant did not file any submissions.
12. The sole issue for determination is whether the Application is meritorious.
13. The legal provisions for review of Court Judgements or orders is found in Section 80 of the Civil Procedure Act and order 45 Civil Procedure Rules. The grounds upon which a Court can review its Judgement under order 45 Civil Procedure Rules are:
  - a. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or order made; or
  - b. Some mistake or error apparent on the face of the record; or
  - c. Any other sufficient reason.
14. In order for the Application to have succeed, the Applicant is duty bound to proof the above grounds. Firstly, the Applicant argued that despite his due diligence during the hearing of this case, there existed



a case at Limuru case which according to him, is crucial that if the Court had considered would have altered the Judgement rendered herein. The 1<sup>st</sup> Respondent vehemently objects to this assertion and submitted that the said James Ngugi filed the Limuru suit in 2016 and later sold the land to the Applicant in 2018 and it is not possible that the said James did not inform the Applicant of the existence of the suit. That in any event he was listed as a witness of the Applicant in this suit.

15. It is on record that the Applicant listed James as his witness in the List of Witnesses dated 19/2/2019. Further in his witness statement that he adopted as evidence, the Applicant testified that he purchased the suit land in October 2018 from James. The Applicant's averment that he tried to look for James in vain is not supported by any evidence and therefore untrue. The Respondent averred that the parties all live in the same village and that the assertion that James Mungai could not be traced for 5 years is untrue. This averment was not controverted by the Applicant. Further no challenge was made against the averment that the said Mungai has been attending Court with the Applicant all along. The Applicant did not controvert this assertion and the Court takes it as the correct position.
16. Further the Applicant has not shown any cogent evidence that he carried out due diligence and could not get the particulars of the Limuru Suit. I have perused the Judgement delivered in this matter and the Court made reference to the said Limuru suit as follows;

“As to whether time stopped running when the title changed hands as the defendant has contended that he only acquired the suit property in 2018 and therefore 12 years has not lapsed, it is the Court considered view that time did not stop running and that by the time the Defendant acquired title over the suit property, James Mungai's title to the suit property had already been extinguished as he was registered as the owner in 1995.”

17. Going from the above it is clear that the Limuru suit was actually in issue and the Court pronounced itself on it. The Applicant cannot therefore lament that the Court did not consider the suit which in his opinion was an important factor in reaching the Judgement. In any event this cannot be a ground for review but perhaps an appeal.
18. On mistake apparent on the face of the record, the Court did not receive any evidence to show that there is an apparent error or mistake on the record.
19. In the upshot the Application is unmerited, it is dismissed.
20. I make no orders as to costs.  
Orders accordingly.

**DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Kamau for 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs

1<sup>st</sup> Defendant – Absent but served

2<sup>nd</sup> Defendant – Absent but served

Court Assistants – Phyllis/Oliver

