



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
ELC NO. 971 OF 2012

KAMAU THIONG'O.....1ST PLAINTIFF/APPLICANT

WEDDY NJERI GITAU.....2ND PLAINTIFF/APPLICATION

FRESIAH MBUGUA.....3RD PLAINTIFF/APPLICANT

VERSUS

MARY WAMBUI MBUGUA..... 1ST DEFENDANT/RESPONDENT

JESSICA AKINYI ODHIAMBO..... 2ND DEFENDANT/RESPONDENT

EUNICE WANJIKU MARARO..... 3RD DEFENDANT/RESPONDENT

RULING

This Court on **11th July 2014**, dismissed the Plaintiff's application dated **10th December 2012** seeking injunction orders against the Defendants from selling a parcel of land known as **Title No. 220/3 PT (UNS. Plot No. B Nairobi Mathare)**. It is this order that the Plaintiffs seek to be reviewed, varied, and/or set aside in their application dated **29th October 2014**.

The application is premised on grounds that the Ruling there ought to be reviewed owing to the discovery of new and important evidence which, after the exercise of due diligence was not within the knowledge and could not be produced at the time the ruling was made. Secondly, that there has

been no delay in bringing the application. Thirdly, that the sale of the suit parcel by the Defendants is imminent and which will occasion to the Plaintiffs irredeemable loss and render the suit an academic exercise.

The application is supported by an affidavit sworn by the 1st Plaintiff wherein he deposes that the purported ground for the sale of the suit plot is that the Council rates and Stand Premium owed to the City Council of Nairobi (*now Nairobi County*) are extremely high and that members are unable to settle the same. However, in a letter dated **2nd December 2013**, the Nairobi County confirmed that the suit land originally belonged to the Government and not the Council and therefore no such **Stand Premium** or **Land Rates** were applicable even to warrant the sale of the plot. Consequently, that the ruling was made on false information and it is in the interest of justice that the ruling be reviewed.

The Defendants filed grounds of opposition in response to the application wherein they stated that no new evidence has been introduced which was not available when the matter was disposed off earlier and therefore the application is an abuse of the Court process.

The application was canvassed by way of written submissions. On behalf of the Plaintiffs, it was submitted that the letter by the Nairobi County confirming that the suit land did not fall under the County in effect revealed that there would be no land rates and/or stand premium owed to the Nairobi City County thereby necessitating the sale of the parcel. Consequently, that the resolution would be patently a perpetration of fraud that would fatally vitiate good faith and accountability. Counsel urged the Court to intervene and protect the genuine interests and intention of the Society's members and promote and uphold the rule of law.

For the Defendants, counsel pointed out that the letter is dated six months prior to the date of the ruling and the Plaintiffs never acted on the same. Thus, that the information alleged to be new was in fact brought to the Plaintiffs attention prior to the delivery of the ruling.

The Court has considered the instant Notice of Motion and the rival submissions and the court finds that:-

The power of the Court to review its own order is given under **Section 80 and Order 45 of the Civil Procedure Act and Rules**, which reads as follows:

80. 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.

Order 45

1. (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.

The question herein is whether the Plaintiffs have met any of the conditions specified hereinabove to warrant a review of the order. It is the Plaintiffs' contention that the letter by the Nairobi City County of **2nd December 2013**, is new evidence that was not within their knowledge and therefore could not be produced at the time the order was made. In response, the Defendants maintain that the letter was written 6 months prior to the delivery of the ruling and the Plaintiffs have not explained why the same was not availed to Court.

I have perused the Court file and do note that this application was filed slightly over 3 months after the delivery of the ruling. It is also obvious that the letter, subject matter of this application was written before the order was made. However, the Plaintiffs have not made an attempt to explain their failure to avail the letter only stating that after conducting due diligence, the same was not within their knowledge.

This observation notwithstanding, the contents of the letter dated **2nd December 2013** is of utmost significance. Therein, the Nairobi City County states that the property originally belonged to the Government and not itself. This revelation goes to the root of the intended sale of the suit parcel. Thus, the actuality or otherwise of the accrued rates and stand premium owed to the Nairobi City County is an issue to be addressed at trial upon further evidence. In the meantime, it is only just and fair, that the suit parcel, subject of the intended sale, be safeguarded pending the determination of the suit.

Having now carefully considered the Plaintiffs Notice of Motion dated **29th October 2014** , the court finds it merited and is allowed in the following terms:-

1. ***The orders emanating from my ruling dated 11th July 2014 are hereby set aside.***
2. ***A temporary Order of Injunction is hereby entered restraining the Defendants by themselves, agents, servants, assigns, persons claiming under them or otherwise howsoever from selling, alienating, transferring, disposing or in such other manner whatsoever dealing with assignment of ownership and/or possession of all that parcel of land known as Title No. 220/3 PT UNS. Plot No. B Nairobi Mathare – Kiamaiko.***
3. ***The injunction granted herein will last for a period of 12 months from the date hereof and will lapse at the expiry of that period unless the same is extended by the court following an application made in that regard.***
4. ***The parties are directed to comply with Order 11 of the Civil Procedure Rules and set the matter down for hearing without delay.***
5. ***Costs of the application shall be in the cause***

Dated, Signed and Delivered this **15th** day of **April, 2016**

L. GACHERU

JUDGE

In the Presence of:-

None attendance for the Plaintiffs/Applicants

Mr Kiboi for the Defendants/Respondents

Lerionka: Court Clerk

L. GACHERU

JUDGE

Court:

Ruling read in open Court in the presence of Mr Kiboi for the Defendant/ Respondents and absence of the Plaintiffs and their Advocates Notice of Ruling delivered to be issued.

L. GACHERU

JUDGE