



**Muhindi v Misoi (Environmental and Land Originating Summons
12 of 2014) [2024] KEELC 796 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 796 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 12 OF 2014**

EO OBAGA, J

FEBRUARY 15, 2024

BETWEEN

RAPHAEL KAGALI MUHINDI PLAINTIFF

AND

MARY JEROTICH MISOI DEFENDANT

RULING

1. This is a ruling in respect of Notice of motion dated 11/12/2023 in which the Judgment Debtor/Applicant seeks to have the judgement delivered on 24.6.2021 reviewed with a view to correcting the judgment to read 0.083 acres instead of 0.83 hectares. The Applicant contends that her intention was to sell land to the Decree Holder/Respondent in acres and not in hectares just in the manner she did to other buyers of her property known as Nandi/Chebilat/129.
2. It is the Applicant's contention that she intended to sell 0.4 acres to the Respondent but that the Respondent is insisting on having 0.83 hectares which will cause a lot of problems to herself and other buyers who have extensively developed their portions. The Applicant seems to be blaming her initial lawyers who allegedly misadvised her to testify in a particular way with the hope that she would win the case but that did not work. She also says that her other lawyers have advised her that she will not succeed before the Court of Appeal and that is why she opted to engage her current Advocate who filed the present application.
3. The Applicant also appears to be arguing that she did not sign the agreement for sale as the Assistant Chiefs who were witnesses were not from the area where the suit land is situated.
4. The Applicant's application was opposed by the Respondent based on a replying affidavit sworn on 21.12.2023. The Respondent contends that the Applicant's application is incompetent as it has been filed by an advocate who was not on record when judgment was delivered and the Advocate did not seek leave of the court to come on record post judgment.



5. The Respondent further contends that the Applicant's attempt to invoke the slip rule is misplaced as the Respondent's claim was based on 0.83 hectares and that is what the court granted him.
6. The Respondent further contends that the Applicant unsuccessfully sought extension of time to appeal before the Court of Appeal and her bid to validate notices of appeal before the Court of Appeal was dismissed and as such she cannot come back to this court seeking review where there exist no grounds for review or correction of judgment.
7. I have carefully considered the Applicant's application as well as the opposition to the same by Respondent. I have also considered the oral submissions by the counsel for the parties. There are two issues which emerge for determination. The first is whether the firm of Joseph C. K. Cheptarus & Company Advocates are properly on record for the judgment Debtor/Applicant. The second is whether there are grounds to invoke the slip rule in this matter and correct the judgment or review the same.
8. On the first issue, it is important to note that the firm of Joseph C.K Cheptarus filed a notice of appointment of advocate on 13.12.2023. The judgment which is sought to be corrected or reviewed was delivered on 24.6.2021. The Advocates who were acting for the Applicant were M/s Kipkosgei Choge & Co. Advocates. A consent was filed on 8.3.2023 allowing the firm of Kutto & Kaira Nabasenge Advocates to come on record for the Applicant.
9. Order 9 rule 9 of the *Civil Procedure Rules* provides as follows:-

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
10. The firm of Joseph C. K Cheptarus & Co. Advocates neither filed a consent allowing the firm to come on record nor filed a notice of motion for the court to sanction his coming on record. The firm is therefore not properly on record.
11. On the second issue, the judgment which was delivered on 24.6.2021 was clear that it is 0.83 hectares which were to be curved out of LR. No. Nandi/Chebilat/129. This is what the Respondent had prayed for in the originating summons and that was what he was granted.
12. During the hearing of the Respondent's claim for adverse possession, evidence was adduced that he was occupying 0.83 hectares. The Applicant herself had commissioned the services of a surveyor who came and demarcated what the Respondent was occupying on the ground. The Respondent's portion measuring 0.83 hectares was marked “B” on the sketch map which he produced. The Applicant cannot therefore claim that she intended to sell to the Respondent 0.4 acres.
13. There is absolutely no error apparent on the case of the record or discovery of new evidence to warrant a review. The Applicant's application is an abuse of the process of court. It was brought after she failed in her attempt to appeal to the Court of Appeal. I find no merit in the application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 15TH DAY OF FEBRUARY, 2024.



E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Cheptarus for Defendant/Applicant.

Mr. Mogambi for Plaintiff/Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

