



Conpak Industries Limited v Muturi (Environment and Land Miscellaneous Application E041 of 2021) [2024] KEELC 3510 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3510 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E041 OF 2021
EK WABWOTO, J
APRIL 30, 2024

BETWEEN

CONPAK INDUSTRIES LIMITED APPLICANT

AND

SAMUEL NDEBE MUTURI RESPONDENT

RULING

1. This ruling is in respect to the applicant’s Notice of Motion dated 26th July 2023 wherein the applicant sought for the following reliefs;
 - (a) That this Honorable Court be pleased to review and/or revise its Ruling issued on 9th March 2023;
 - (b) That this Honorable Court do grant any other order that it may deem just and fair in the circumstances;
 - (c) That the costs of this application be borne by the Respondent for eviction orders against the respondent.
2. The application was premised on the grounds that;
 - i. In the Ruling delivered on 9th March 2023, the learned judge dismissed the Amended Notice of Motion dated 27th April 2022 filed by the Applicant on grounds that there was no compliance with Section 152E of the Land Act No. 6 of 2012 (“the Act”).
 - ii. The reason cited for non-compliance with Section 152E of the Act was due to the fact that the Respondent was never served with the eviction notice yet the same had been served and attached as Exhibit No. CIL 3 in the Supporting Affidavit dated 15th February 2021.



- iii. Upon doing a file perusal of the court record, we discovered that the said eviction notice marked as Exhibit CIL 3, was missing in the court record as part of the annexures within the Applicant's pleadings, despite having the same delivered a hard copy of the same to court twice as directed by this Honorable Court and the same filed on the e-filing system.
 - iv. With such an error of omission committed, it was the reason that this Honorable Court arrived at dismissing the application for failing to meet the requirements of Section 152 of the Act.
 - v. The Applicant is therefore apprehensive that unless this application is heard and determined and the orders sought herein issued in terms of the application filed herewith, the Applicant might stand to lose the property known as L.R. No. 209/7214, Isiolo Road (hereinafter "suit property")
 - vi. Accordingly, this application ought to be granted in the interests of justice.
3. The application was opposed vide a Replying affidavit dated 16th November 2023 sworn by Samuel Ndebe Muturi.
 4. Pursuant to the directions issued by this court, it was directed that the application be canvassed by way of written submissions. The Applicant filed its written submission dated 14th March 2024 while the Respondent filed his written submissions dated 26th March 2024.
 5. The applicant outlined two issues for determination by the court. These were: -
 - a. Whether there was an error on the apparent face of the record to warrant a review of the ruling dated 9th March 2023?
 - b. Whether a review of the ruling should issue?
 6. It was the Applicant's case that the Eviction Notice can be located on the e-filing platform as it was filed on 10th March 2021. It was unfortunate that the same was conspicuously missing from the court record yet from previous directions from the court back on 30th April 2021 and 30th September 2021 respectively to have the hard copies of the same delivered to the court. These directions were complied with but there was no apparent reason why the same were missing on the Court record.
 7. It was further submitted that all the requirements of Section 152E of the Act had been rightly met as evidenced by Annexure CIL 3 in the Amended Notice of Motion dated 27th April 2021 and Annexure GM which shows when it was filed. As of the date of these submissions made before this Honorable Court, the aforesaid annexures can be seen to have been filed over 36 months ago.
 8. The Respondent equally outlined two issues for determination;
 - a. Whether there is an error apparent on the face of the court record?
 - b. Did the Applicant comply with Section 152E of Land Act?
 9. In opposing the application, the Respondent relied on the case of National Bank of Kenya Limited v Ndungu Njau (Civil Appeal No 21 of 1996) to emphasize that an error apparent must be obvious, self-evident and need not require an elaborate argument. It was further argued that proper service and proof of service had not been filed by the applicant.
 10. The court has considered the application as well as the parties' affidavits and submissions made for and against the application. The main issue for determination is whether the application is merited to warrant the grant of the review orders sought herein.



11. With regard to review of the orders, Section 80 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya provides 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.”

12. Order 45 Rule 1 (1) of the *Civil Procedure Rules* provides as follows:

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 judgement to the court which passed the decree or made the order without unreasonable delay. [Emphasis Mine]

13. From the provisions of Section 152E of the Land Laws (Amendment) Act No. 28 of 2016, it is undisputed that the Land owner who seeks to procure and or obtain an order of eviction is obliged to issue and serve an eviction notice not only upon the unlawful occupant but also the Deputy County Commissioner in charge of the area and the Officer Commanding the police division of the area.

14. In the instant case, the court has perused the e-filing platform and confirms that the eviction notice in form of a letter dated 9th September 2020 was filed electronically. Whereas Annexure 3 has the name of Mr. Samuel Muturi (Respondent) ticked off. It is evident that the letter was received on the Respondent’s behalf by John Muturi on 9th September 2020. On the other hand, Annexure 4 shows only the OCPD’s section as having been ticked off presumably on 14th September 2020. No further evidence and affidavit was produced to confirm service upon the Deputy County Commissioner.

15. My interpretation of Section 152E is that the prescribed process is not only mandatory upon the landowner but also all encompassing. Therefore, failure to serve even one of the prescribed parties amounts to insufficient service.

16. In view of the foregoing, the court finds that there was no compliance with Section 152E of the Land Laws (Amendment) Act No. 28 of 2016.

17. Accordingly, the Notice of Motion dated 26th July 2023 is unmerited and the same is hereby dismissed with an order that each party bears own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL 2024

E.K. WABWOTO

JUDGE



In the Virtual Presence of:-

Mr. King'ara h/b for Mr. Githiomi for the Applicant.

Ms. Vuchocho for the Respondent.

Court Assistant: Caroline Nafuna.

