



**Bunyi v Lepaso & 3 others (Environment & Land Case
575 of 2017) [2024] KEELC 4208 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4208 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 575 OF 2017**

MN GICHERU, J

MAY 22, 2024

BETWEEN

GRACE WANGARI BUNYI PLAINTIFF

AND

MOSES KIRUTI LEPASO 1ST DEFENDANT

GRACE WAITHERA GICHUHI 2ND DEFENDANT

NG'ANG'A GIKONYO 3RD DEFENDANT

STEPHEN NJUGUNA KIMANI 4TH DEFENDANT

RULING

1. This ruling is on the amended notice of motion dated 25/11/2023. The motion which is by the second defendant seeks the following orders.
 2. Setting aside/review of the judgment and decree dated 23/6/2022 and 20/7/2022 respectively.
 3. Leave be granted to the defendants to ventilate their case adequately.
 4. Maintenance of the status quo.
 5. Costs be provided for.
2. The motion is based on twenty (20) grounds and is supported by an affidavit sworn by the second defendant which has many annexures. The gist of the above material is as follows.

Firstly, the defendants are in occupation of the suit land which is L.R. Kajiado/Kitengela/33576.

Secondly, the 1st and 2nd defendants are also plaintiffs in ELC No. 579/2019 where the plaintiff is the 1st defendant.



Thirdly, Case No. 579/2019 was filed before this case. It challenges the illegal subdivision of L.R. 1957 which was subdivided into L.R. 12922 and 12923.

Fourthly, the defendants were never heard in this case because their former counsel mishandled the matter.

Fifthly, the defendants are in danger of being evicted from the suit land without having been heard and this undermines their constitutional right to a fair hearing as per Article 50 (1) of *the Constitution*.

3. The motion is opposed by the plaintiff whose counsel has filed grounds of opposition and notice of preliminary objection both dated 19/12/2022. The grounds are as follows.

Firstly, the motion is misconceived, frivolous and a waste of court's time.

Secondly, the defence by the defendants was considered during the hearing of the case.

Thirdly, the defendants were represented in the suit at both the hearing and at the time of filing written submissions.

Fourthly, no good reasons have been given as to why the defendants and their counsel did not attend court or file written submissions and all parties were given adequate time.

Finally, the second defendant is not a party to ELC No. 579/2017 and she has no proprietary interest in the suit land.

4. Counsel for the parties were to file written submissions by 31/3/2024 but as I write this ruling on 15/5/2024, no submissions have been filed by either side. I have therefore written this ruling without the benefit of the learned counsels' submissions.

5. I have carefully considered the motion in its entirety including the affidavits, annexures, grounds in support and in opposition as well as the preliminary objection. Since the motion seeks review of the judgment and decree herein, I find that it should have been brought under Order 45 and not under Order 40 Civil Procedure Rules. I will treat the motion as if it had been brought under Order 45 Civil Procedure Rules.

6. Review under Order 45 Civil Procedure Rules can only be based upon any or all of the following grounds under Rule 1 (1) (b) of the order,
 - i. discovery of new and important matter or evidence which was not within the knowledge of the applicant,
 - ii. mistake or error apparent on the face of the record,
 - iii. other sufficient reason.

There is no other ground for seeking for review.

7. A look at the judgment dated 23/6/2022 shows that the defence evidence was considered at pages 5 and 6. The court also made a determination of that evidence in determining the 1st, 2nd and 3rd issues. Applying the test in Order 45 Rule 1 (1) (b) to the current application, I make the following findings.

Firstly, the applicant is not saying that there is discovery of new and important material which was not within her knowledge at the time the judgment was delivered.

Secondly, she is not saying that there is a mistake or error apparent on the face of the record.



Finally, she is not saying that there is an important matter that has cropped up. Her application is a restatement of the dispute which she had pleaded earlier on 28/2/2019. The court has already made its determination on this issue. It is clear there is nothing new to be considered.

8. There is a further requirement in the proviso to Order 45 Rule 1(1) (b) of the Civil Procedure Rules that an application for review be made without unreasonable delay. The amended motion was filed 8/12/2023. This was almost one a half years since the date of the judgment dated 23/6/2022.
9. From the above analysis, it is very clear that the motion dated 25/11/2023 does not meet the threshold for grant of the orders of review because there is no discovery of new and important matter or evidence, no mistake or error apparent on the face of the record, no other sufficient, reason, and the application has been brought after a delay of close to one a half years which is inordinate delay. I find no merit in the motion and I dismiss it with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2024.

M.N. GICHERU

JUDGE

