



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, MUSINGA & MURGOR, J.J.A.)

CIVIL APPEAL APPLICATION NO. 199 OF 2001

BETWEEN

GEORGE LOCH MBUYA OGOLA APPELLANT

AND

ELISHA OKEA'S FAMILY FIRST RESPONDENT

COUNTY GOVERNMENT OF MIGORISECOND RESPONDENT

(Application for Judicial Review of the Judgment of the Court Of Appeal at Kisumu, (Omollo, Githinji & Aganyanya, J.J.A.)

RULING OF THE COURT

1. On 8th May, 2009, this Court, differently constituted, allowed an appeal by the appellant, whereby Wambilyanga, J. had reviewed the judgment of Waweru, J. dated 7th July, 2000 in High Court Civil Appeal No. 155 of 1998 at Kisii.
2. On 4th November, 2015 the same appellant filed an application urging this Court to review the aforesaid judgment, saying that he was not satisfied with the said judgment. At the centre of the dispute between the parties is the ownership of a parcel of land known as Plot No. 24 Migori Town. The court's decision affirmed that the said parcel of land was registered in the name of Loch Ogola (deceased), the father of the applicant as well as Elisha Okea Ogola, who is also deceased, and would comprise part of Loch Ogolla's estate. That was in accordance with the finding of the subordinate court that was confirmed by the High Court, (Waweru, J.)
3. In his application urging this Court to review its judgment of 8th May, 2009, the appellant contended that he was the one known as Loch Ogola, which implies that the disputed property is lawfully his.
4. The application was opposed by the respondents. They argued, **inter alia**, that the court lacks jurisdiction to review its own judgment as it is **functus officio**, that the application is not based on any known provision of the law; that even if the court had jurisdiction, the issue of ownership of the said plot was properly dealt with by both the trial court as well as this Court; and that the original respondent, Elisha Okea, had died and there has been no substitution, consequently, the inclusion or joinder of Elisha Okea's family as a respondent is void **ab initio**.
5. Both **Mr. Oguttu-Mboya** and **Mr. Odhiambo Oronga**, learned counsel for the 1st and 2nd

respondents respectively, made brief submissions reiterating the grounds raised by their respective clients in opposition to the application as highlighted above. The applicant, who was unrepresented, relied on his written submissions.

6. The main issue for our determination in this application is whether this Court has power to review its own judgments. This issue has been considered in several recent decisions. In **BENJOH AMALGAMATED LIMITED & ANOTHER V KENYA COMMERCIAL BANK [2014] eKLR**, this Court stated that it has residual jurisdiction to review its own decisions to which there is no appeal to correct errors of law that have occasioned real injustice or miscarriage of justice.

The Court however remarked:

“This is jurisdiction that has to be exercised cautiously and only where it will serve to promote public interest and enhance public confidence in the rule of law and our system of justice”.

7. The Court went on to state that it would be reluctant to invoke that residual jurisdiction where there has been laches or where legal rights of innocent third parties have vested during the intervening period.

8. The above principles were adopted by this Court in **JIMNAH MWANGI GICHANGA V ATTORNEY GENERAL [2015] eKLR** and **HARUN OSORO NYAMBUKI V PETER MUJUNGA GATHURU & ANOTHER [2016] eKLR**.

9. In this application, we are not satisfied that there are errors of law that warrant any review. Three different courts that had occasion to deal with the issue of ownership of the suit property have come to the same conclusion that the suit property is registered in the appellant’s name. The courts are the Senior Principal Magistrate’s court at Migori, Civil suit No. 7 of 1993, High Court of Kenya at Kisii, Civil suit No. 155 of 1998 and the Court of Appeal at Kisumu, Civil Appeal No. 199 of 2001.

10. But even if there was any error of law, we doubt that there was, we would still have been disinclined to invoke our residual jurisdiction of review, considering that the decision sought to be reviewed was made more than seven years ago. The first respondent has no legal capacity to be sued, Elisha Okea family is not a body corporate. An entire family cannot be sued in an amorphous manner as has been done in this matter.

11. The application is without merit. Consequently, it is dismissed with costs to the second respondent.

DATED and delivered at Kisumu this 16th day of December, 2016.

D. K. MARAGA

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

*I certify that this is a true
copy of the original.*

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DEPUTY REGISTRAR