



REPUBLIC OF KENYA



KENYA LAW
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Mkullu v Hassan; Abdulkarim (Intended Defendant) (Environment & Land Case 89 of 2015) [2024] KEELC 4230 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4230 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 89 OF 2015
SM KIBUNJA, J
MAY 15, 2024
FORMERLY HCCC NO. 111 OF 2007

BETWEEN

MOHAMED ABUSHIRI MKULLU PLAINTIFF

AND

SULEIMAN ABDALLA HASSAN DEFENDANT

AND

NASSEM ABDULKARIM INTENDED DEFENDANT

(FORMERLY HCCC NO. 111 OF 2007)

RULING

1. The plaintiff moved the court through the notice of motion dated the 5th February 2024 and 22nd April 2024. I take latter one to be an amendment to the previous one. The applications seeks for review of the judgement and orders of 26th June 2023, by issuing an order for the portion of land occupied by the plaintiff's building to be excised from the suit property, and be registered in his name, leaving the remaining portion in the names of the registered proprietors.
2. When the application came up for mention on the 13th May 2024, Ms. Hamid h/b for Hamza for the defendant indicated that they are not opposed to the application. The court fixed the application for ruling today.
3. I have considered the said application, the record and the judgement delivered on the 26th June 2023 and come to the following determinations:
 - a. That the plaintiff had through the originating summons, dated the 8th May 2007, sought to be registered as absolute proprietor of the suit propriety in place of the two registered proprietors,



defendants. The suit against the 2nd defendant was struck out on the 17th July 2012. After hearing the plaintiff, the court in its judgement of 26th June 2023 *inter alia*, awarded him half share of the suit property, and ordered that he be registered as proprietor of that portion in place of the 1st defendant.

- b. Now what the plaintiff is seeking is for the review of the judgement and orders of 26th June 2023, by issuing an order that the portion of land occupied by the plaintiff's building be excised from the suit property, and it be registered in his name, leaving the remaining portion in the names of the registered proprietors. That prayer has no connection with what was sought for through the originating summons. In law, a party is bound by his/her/its own pleadings.
 - c. For a party to succeed in a review application, one has to meet the threshold set in Order 45 Rule 1 of the [Civil Procedure Rules](#), by showing the court that there exists new and important matter of evidence has since been discovered, or mistake or error on the face of the record, or any other sufficient reason for review orders to issue. The plaintiff herein was successful in his suit against the 1st defendant, and got orders in his favour. I have not seen any affidavit in support of the two applications and the court is left without any explanations as to the reasons for the application.
 - d. That Ms. A. O. Hamza & Company Advocates came on record in this suit post judgement, through the notice of appointment dated the 10th October 2023, for Nassem Abdulkarim, intended 1st defendant, in the notice of motion of the same date that is still pending in court, and diarized for ruling on 5th June 2024. As such, the said counsel is not on record for Suleiman Abdalla Hassan, the 1st defendant in the originating summons and judgement. Accordingly, when Ms. Hamid addressed the court on the 13th May 2024 h/b for Hamza for the defendant, the court understood her to be for the intended 1st defendant, who is the applicant in the notice of motion dated 10th October 2023, and not the 1st defendant in the originating summons and judgement.
 - e. That from the foregoing, it follows that the plaintiff has failed to establish that the judgement delivered on 26th June 2023 had any errors or mistakes that needed to be corrected. He has also failed to point out what new and important matters of evidence has come to his knowledge to warrant a review of the judgement. The plaintiff has in short not given the court any other sufficient basis upon which a review of the judgement in the terms sought could be predicated.
 - f. That having found no merit in the application, and as no replies were filed, the plaintiff will bear his own costs.
4. That the upshot of the foregoing is that the plaintiff's notices of motion dated the 5th February 2024 and 22nd April 2024 are without merit and are dismissed, with no orders as to costs.

It is so ordered.

DATED AND VIRTUALLY DELIVERED ON THIS 15TH DAY OF MAY 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiff : No appearance

Defendant : No appearance



Intended Defendant : No appearance

S. M. KIBUNJA, J.

ELC MOMBASA.

Leakey – Court Assistant.

