



**Githinji v Mugo & another (Environment & Land Case  
634 of 2014) [2024] KEELC 3672 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3672 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 634 OF 2014  
JO OLOLA, J  
MAY 9, 2024  
(FORMERLY NYERI HCCC NO. 65 OF 2008)**

**BETWEEN**

**MATHEW KARIUKI GITHINJI ..... PLAINTIFF**

**AND**

**SCHOLASTICA WAIRIMU MUGO ..... 1<sup>ST</sup> DEFENDANT**

**NAOMI WANJIKU NDIRITU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By his Application dated 18<sup>th</sup> July 2023, Mathew Kariuki Githinji (the Plaintiff) prays for orders:
  3. That the Honourable Court be pleased to give an order reviewing, varying and/or setting aside its orders herein issued on 8<sup>th</sup> May, 2023;
  4. That the Honourable Court in reviewing, varying and/or setting aside its orders issued on 8<sup>th</sup> April, 2023 (sic) does give the Plaintiff leave to re-open his case and file the Forensic Document Examiner's Report and call the Expert to adduce the same;
  5. that the Honourable Court be pleased to give any such further orders sufficient in the circumstances for meeting the ends of justice; and
  6. That the costs be provided for.
2. The Application which is supported by an Affidavit sworn by the Plaintiff is premised on the grounds:
  - (i) That on or about 26<sup>th</sup> June 2008, the Plaintiff filed the instant suit seeking for cancellation of the title deed issued to the late Mathew Ndiritu Rubia for the parcel of land known as Othaya/Itemeini/203;



- (ii) That the Plaintiff has discovered that an important matter and evidence was not placed before the Court which matter indicates that the Sale Agreement, the Transfer Form and Land Control Board Form have forged/fabricated signatures of the Plaintiff;
  - (iii) That it was not within the power of the Plaintiff to produce the document since he is not an expert in document examination;
  - (iv) That the previous counsel on record for the Plaintiff unwillingly failed to produce the forensic documents examiner's report; and
  - (v) That this Court has inherent and original jurisdiction over any land dispute and it ought to conclude the trial of the substantial matters in issue.
3. The Application is opposed. By their Grounds of Opposition dated 13<sup>th</sup> June 2023, Scholastica Wairimu Mugo and Naomi Wanjiku Ndiritu (the Defendants) object to the Application on grounds that:
- 1. Though the Application names the Defendants as the Applicants, they have not made any Application;
  - 2. The question is what the new matter or evidence that the Applicant did not have or could not, after due diligence, acquire;
  - 3. The Forensic Report which the Plaintiff seeks to produce was indeed produced as an exhibit;
  - 4. The trial was not terminated as stated but the matter proceeded as provided under Order 18 Rule 2(3) of the Civil Procedure Rules; and
  - 5. The Application lacks merit, is an abuse of the process of the Court and is meant to contravene Article 159 (2)(b) of the Constitution.
4. I have carefully perused and considered both the Application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the Parties herein.
5. By his Application before the Court, the Plaintiff urges the Court to be pleased to review, vary and/or set aside the Judgment delivered herein on 8<sup>th</sup> May, 2023 on account that he wishes to produce a Forensic Document Examiner's Report that was not produced at the trial and to call the Expert who prepared the same to produce it. It is the Plaintiff's case that even though the Report was available, his previous Advocate on record unwittingly failed to produce the same.
6. On matters of review, Section 80 of the Civil Procedure Act, Cap. 21 of the 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 the Judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”



7. As to the manner of procedure, 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, 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 the Judgment to the Court which passed the decree or made the order without unreasonable delay.”

8. In the matter before me, the Plaintiff avers that his previous Advocate on record unwittingly failed to produce the Forensic Document Examiner’s Report which had indicated that his signature on the Sale Agreement, the Land Control Board Form and the Transfer Form were forged and/or fabricated. It is the Plaintiff’s case that the same was an important matter of evidence but the same was not within his power to produce and hence his prayer that the case be re-opened to enable him call the Expert witness to produce the same.

9. From a perusal of the Record herein, it is evident that the Forensic Document Examiner’s Report dated 10<sup>th</sup> May, 2012 was filed in Court together with the Plaintiff’s list of Documents which are dated 15<sup>th</sup> April, 2012. That record also reveals that on 17<sup>th</sup> September 2013, the Plaintiff’s then Advocate one Mr. Mwangi did inform the Court that he had the Report but it had been difficult to trace the particular CID officer who had prepared the same. Following his request, that document was allowed and was produced by consent as PExh 2 during the proceedings in Court on 17<sup>th</sup> September, 2013.

10. Arising from the foregoing, it was clear that the position taken by the Plaintiff that the Forensic Document Examiner’s Report was not produced and/or considered by the Court was not factual. In the Judgment of this Court dated 8<sup>th</sup> May, 2023 which the Plaintiff seeks to have reviewed, Paragraph 14 thereof captures the Plaintiff’s testimony as follows:

“ 14. PW1 told the Court he did not execute any documents transferring the property to the deceased. He further told the Court he never went to the Land Control Board and did not apply for their consent to transfer the land. PW1 further told the Court he had not executed the Sale Agreement dated 13<sup>th</sup> May, 2005 and that all the documents used to effect the transfer had been found by the CID to be forgeries.”

11. That being the case, it was evident that the document sought to be produced was already produced before the Court and that the same had been taken into consideration before the Court rendered its Judgment. As was stated in Kenneth Nyaga Mwigwe v Austin Kiguta & 2 Others (2015) eKLR:

“ When the Court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.”



12. It follows that I did not find any merit in the Application dated 25<sup>th</sup> May, 2023. The same is hereby dismissed with costs to the Defendants.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI  
THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

**J. O. OLOLA**

**JUDGE**

In the presence of:

No appearance for the Plaintiff

Mr. Duncan Mindo for the Defendants

Court assistant – Kendi

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