



**Njobe & another v Muri (Environment & Land Case
E001 of 2022) [2024] KEELC 5038 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5038 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E001 OF 2022
LN GACHERU, J
JUNE 27, 2024**

BETWEEN

THERESIAH MUTHONI NJOBE 1ST PLAINTIFF

GERALD CHEGE MWANGI 2ND PLAINTIFF

AND

FREDRICK MUIRURI MURI DEFENDANT

RULING

1. The Plaintiff/ Applicant, Theresia Muthoni Njobe, brought this Notice of Motion Application dated 13th October, 2023, premised on Section 80 of the [Civil Procedure Act](#) and Order 45 of the [Civil Procedure Rules](#), and sought for the following Orders:
 - i. THAT the court be pleased to review and set aside its Judgment of 27th July, 2023, which dismissed Plaintiffs' Originating Summons dated 12th October, 2021.
 - ii. That costs of the Application be provided for.
2. The said Application is anchored on the grounds set out on its face and on the Supporting Affidavit of Applicant, Theresiah Muthoni Njobe, sworn on 13th October, 2023.
3. The Applicant has invoked the Court's powers of review in respect of its own Judgment delivered on 27th July, 2023, which Judgment dismissed the 1st Plaintiff's/ Applicant and 2nd Plaintiff's joint claim over land parcel number KAKUI/KIRIMIRI BLOCK 2/262, (the suit property). The dismissed claim was anchored on the doctrine of Adverse Possession.



4. The Plaintiff/ Applicant has argued that this Court dismissed her suit erroneously on grounds of failure to supply evidence demonstrating that the Chief Magistrate’s Court issued a directive requiring her to vacate the suit property whereas, she presented the same information on pages 10-11 of her trial bundle.
5. The Applicant pointed to a Ruling dated 4th August, 1998, which she contended, that this Court had determined it to be missing; but which, she asserted, actually formed part of her evidence adduced in the dismissed suit.
6. It is her contention that in view of the Ruling appearing on page 11 of her trial bundle documents, the foregoing finding by this Court was erroneous and, thus, a prime candidate for review through the present proceedings.
7. The essence of the current Application is that pages 10-11 of the Applicant’s trial bundle marked “TMN-4” contains the proceedings and Ruling of the Chief Magistrate’s Court dated 4th August 1998, in Thika CMCC No.102 of 1991; which Ruling, it was contended, required the Applicant to vacate the suit property.
8. She argues that her continued living on the suit land was consequent to the preceding directives from the Court to vacate the property. Further, that her occupation took place without the Respondent’s permission. She invited the Court to conclude that the net effect of her continued stay on the suit land could only be in contempt of the Orders of the Court issued against her dated 4th August, 1998, in Thika CMCC No.102 of 1991. Further, that it is the Applicant’s contention that this Court ought to review its decision dated 27th July, 2023.
9. The Application was canvassed by way of written submissions. The Respondent did not oppose the Application
10. The Applicant filed written submissions on 14th February, 2024, through the Law Firm of J.K. NGARUIYA & COMPANY ADVOCATES.
11. The Applicant cited the holding of the Court in the case of Republic Vs Advocates Disciplinary Tribunal Ex-Parte Apollo Mboya [2019] eKLR, and submitted that this Court should be guided by the following ten (10) principles in considering the instant application:
 - i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1, of the Civil Procedure Rules, and not otherwise.
 - ii. The expression “any other sufficient reason” appearing in Order 45 Rule 1, has to be interpreted in light of other specified reasons.
 - iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of the record justifying exercise of power under Section 80.
 - iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
 - v. A decision/order cannot be reviewed under Section 80 of the Civil Procedure Act, on the basis of subsequent decision/judgment of a coordinate or large Bench of the tribunal or of a superior court.”
 - vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.



- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
 - viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detailed examination.
 - ix. Section 80 of the *Civil Procedure Act* provides for a substantive power of review by a civil court, and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof for the said purpose, the procedural contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the *Civil Procedure Act* does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
 - x. The power of a civil court to review its judgment/decision is traceable to Section 80 *CPA*. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
12. The Applicant further submitted that the proceedings in Thika Civil Case No. 102 of 1991, terminated with an Order issued by the Court on 7th April, 1992, directing the Applicant to vacate the suit property. The Applicant further submitted that the Respondent filed an application dated 28th September, 1993, with a prayer for the Court to declare the Applicant in contempt of the Orders dated 7th April, 1992, as the Applicant had refused to exit the suit land despite being the subject of an eviction by Kang’ethe Auctioneers. She added that the Court allowed the prayers sought in the application dated 28th September, 1993, vide a decision delivered on 13th October, 1994, whereby, the Applicant was held to be in contempt of the Orders dated 7th April, 1992. She stated that the preceding information was captured on pages 10 and 11 of her trial-bundle in respect of the dismissed suit. She added that the aforesaid orders for contempt obtained against her were never executed.
13. The Applicant submitted that the main reason for the Court’s dismissal of her suit is captured in the following paragraph:
- “The Plaintiffs in their submissions submitted that time started running from 26th May, 1998, when the Order for committal was issued. Interestingly as per the proceedings of the said date, no Order was issued and it’s not clear what nature of application was scheduled for hearing on 30th June 1998. On 30th June 1998, the court after hearing parties gave directions that it would render its Ruling on 4th June 1998, over the application dated 28th September 1993. Whether the said ruling was delivered or not, it is not known to this court. It is also not certain whether the matter was concluded or not...”
14. The Applicant submitted that adverse possession accrues on land. It was her further submission that she entered into and settled on the suit property without permission from the Respondent and remains in situ hence her decision to file a suit seeking to be declared the owner thereof under the doctrine of Adverse Possession.
15. The Court has considered the instant application, the written submissions, the impugned judgment and the relevant provisions of law and finds the issue for determination is:
- i. Is the Applicant entitled to the Orders sought?



16. The Respondent did not defend the dismissed suit nor enter appearance and/or file a response in respect of the current application. The Court has perused and analyzed the Applicant’s pleadings and written submissions in support of the application.

17. In order for a party to successfully move a court to review its own decision or that of a Court with coordinate jurisdiction, the party is required to meet certain conditions, as was established by the Supreme Court in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- i. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- ii. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- iii. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- iv. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”

18. The Court notes that in its decision rendered on 27th July, 2023, dismissing the Plaintiffs’ suit, made several findings. Firstly, the Court determined that the Plaintiffs failed to demonstrate that they were in occupation of the suit land:

“There was no evidence to suggest that the Plaintiffs are in occupation of the property... To this end, it would be difficult to discern the nature of occupation or even tell when the Plaintiffs gained entry into the suit property. It was the duty of the Plaintiffs to lead evidence that their re-entry into the suit land continued despite the orders of Court if any. It is not enough to say that the orders of the trial Court were never executed, and as such adverse possession can issue. There was not evidence that the Plaintiffs herein disposed the Defendant of the suit property.”

19. Secondly, the Court held that the Plaintiffs failed to establish that their occupation of the suit property ever became adverse to the Defendant (now Respondent):

“It is not enough that no evidence of possession and occupation were placed before this Court, there was

no evidence that the Defendant was denied use and occupation of the suit land as a result of the Plaintiffs’ occupation. It is also relevant to point out that this Court was not notified on whether Plaintiffs were occupying the entire parcel of land or a specific portion of it. The need to lead evidence on this was elaborated by the Court in the case of *Mount Elgon-Beach Properties Limited V Kalume Mwanongo Mwangaro & Another* [2019] eKLR... This Court cannot be guided otherwise. The burden of leading evidence rested with the Plaintiffs and the Plaintiffs have failed to demonstrate their occupation became adverse to the Defendant’s land...”



20. The Plaintiffs' dismissed claim was premised on the doctrine of Adverse Possession. The issue of the Plaintiff/ Applicant's occupation of the suit land raised by the Court in its Judgment dated 27th July, 2023, has no connection to the documentation appearing on pages 10 and 11 of the Plaintiffs/ Applicant's trial bundle which the Court was referred to. Therefore, even accepting that the evidence found on pages 10 and 11 of the 1st Plaintiff's (now Applicant) trial bundle sufficiently demonstrates that an Order for contempt was issued against the Applicant, such proof, does not dispose of the grounds forming the basis for the Judgment dated 27th July, 2023, particularly, the crucial issue of the point in time when the Applicant took possession of the suit land thereby dispossessing the Respondent of the same.
21. Occupation of the land in question is essential to sustain a claim of ownership premised on the doctrine of Adverse Possession. The decision of this Court delivered on 27th July, 2023, analyzed the several legal precedents concerning the conditions that need to be proven by Applicants seeking to acquire land by way of Adverse Possession, namely: *Mtana Lewa v Kabindi Ngala Mwangandi [2015] eKLR*; *Mbira V Gachubi [2002] 1 EALR 137*; Kisumu Civil Appeal No. 27 of 2013 Samuel Kihamba V Mary Mbaisi [2015] eKLR; *Maweu V Liu Ranching & Farming Cooperative Society [1985] eKLR*; *Gachuma Gacheru V Maina Kabuchwa [2016] eKLR*; and, *Peter Kamau Naju V Emmanuel Charo Tinga [2016] eKLR*. The Court determined that the Plaintiffs failed to adduce sufficient evidence to satisfy the principles elaborated in the foregoing case-law.
22. It is evident that the Judgment delivered by this Court on 27th July, 2023, was not narrowly-based on whether the proceedings in Thika CMCC No.102 of 1991, terminated with an Order for contempt against the Applicant or, her subsequent conduct in relation to the same Order. Rather, the decision hinged on whether the Plaintiffs were in actual occupation of the suit property as their suit was premised on the doctrine of Adverse Possession. The Court underscored that the Plaintiffs failed to present photographs or other form of evidence such as a report by a land valuer detailing the possibility of their occupation of the suit land.
23. It is trite that Adverse Possession is one of the ways of acquiring land as provided by Section 7 of the *Land Act*. Further, Adverse Possession dispossesses the actual owner of his land parcel, and therefore, sufficient evidence must be availed before a Court can declare one to have acquired the suit land claimed, by the doctrine of Adverse Possession.
24. The Court finds and holds that this Application as contained in the Notice of Motion dated 13th October, 2023, is not merited. Consequently, the instant Application is thus dismissed entirely. Since the Application was not defended, there are no orders as to costs.

It is so ordered.

Dated, Signed and Delivered Virtually this 27th day of June 2024.

L. Gacheru

Judge

Delivered online in the presence of:

Joel Njonjo – Court Assistant.

No Appearance for the 1st Plaintiff/ Applicant.

No Appearance for the 2nd Plaintiff



No Appearance for the Defendant

L. Gacheru

Judge

27/06/2024

TABLE

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