



M'arimi v M'arimi; Kagwiria (Interested Party) (Environment & Land Case 201 of 2012) [2024] KEELC 4910 (KLR) (19 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4910 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 201 OF 2012**

**CK NZILI, J
JUNE 19, 2024**

BETWEEN

ROSE GACHERI M'ARIMI PLAINTIFF

AND

GEDION M'IKUNYUA M'ARIMI DEFENDANT

AND

TRIPOSA KAGWIRIA INTERESTED PARTY

RULING

1. On 27.10.2021, this court ordered for substitution of the deceased defendant with Jane Nkirote as an interested party, for purposes of execution of the decree issued on 18.12.2017.
2. By an application dated 12.2.2024 the court is asked to stay the execution of the decree, to join Triposa Kagwiria as an interested party and to vary, review and or set aside the decree.
3. The grounds are contained on the face of the application and in the supporting affidavit of Triposa Kagwiria sworn on 12.2.2024.
4. It is averred that the decree issued canceled L.R No. Nthimbiri/Igoki/668, yet it did not belong to the defendant; the actual owner was not a party to the suit, and she was condemned unheard. The applicant says that she is the legal representative of her deceased husband as per a grant issued on 9.3.2007, attached as annexure TK "1" and became aware of the suit when she received a demand letter on 6.2.2024, attached as T.K. "2" and that the decree was issued long after her husband passed on as per a certificate of death attached as T.K. "3".
5. The applicant avers that no efforts were made to join her husband as a party, yet he was the registered owner of the land; she was not equally joined as the legal representative, yet the decree-holder has her land where she lives separately from her late husband's land. For those reasons, the applicant prays that



- the decree be reviewed and says that the decree-holder has what was awarded to her from the remaining balance of the suit land separate from her deceased husband's portion.
6. The application is opposed through a replying affidavit sworn by Rose Gaceri M'Arimi on 8.5.2024. It is averred that the application is an appeal disguised as one seeking review orders, yet it does not fall under Order 45 of the [Civil Procedure Rules](#) seeking to reopen matters already determined to finality.
 7. The respondent avers that in the judgment dated 21.9.2017, all the resultant titles from L.R No. Nthimbiri/Igoki/209 including L.R No. Nthimbiri/Igoki/668, were dealt with to finality and distributed afresh by the court.
 8. The respondent admits that the applicant and her late husband were not a party to the suit, lack locus standi, and have failed to annex the decree sought to be reviewed, contrary to [Suleiman Murunga vs Nielstar Holdings Ltd & another](#) (2015) eKLR and [Hosea Nyandika Mosagwe and 2 others vs County Government of Nyamira](#) (2022) eKLR.
 9. A party seeking for stay of execution and review under Order 45 [Civil Procedure Rules](#) has to meet several conditions, among them apply without unreasonable delay, show there will be substantial loss if stay is not granted, offer security for due realization of the decree should the appeal fail, indicate there was an error apparent on the face of the record or new and vital information which without exercise of due diligence was not in possession of the applicant and show there is a good or sufficient cause to review the decree.
 10. In this application, the applicant has not shown what loss or damages he stands to suffer should the decree be executed. There is no official search certificate attached to show that the applicant is the registered owner of L.R No. Nthimbiri/Igoki/668. There is no evidence of any developments on the suit land. The applicant says that she only became aware of the suit or decree after being served with a demand letter dated 6.2.2024.
 11. Had the official search certificate for the land allegedly affected been attached, the court would have established when the same came under the name of the applicant's late husband. In [James Wangalwa vs Agnes Naliaka Cheseto](#) (2012) eKLR, the court held that substantial loss must be demonstrated with cogent and tangible evidence. It is not enough to allege that there is an impending execution.
 12. Execution is a legal process. A party must demonstrate a stake or the substratum is likely to change to defeat their claim. The applicant is not seeking the setting aside of the decree or judgment for rehearing of the suit based on a proposed defence to the claim. Instead, the applicant appears to be admitting that the decree-holder is entitled to a portion of the mother title. This court must be supplied with the nature of the applicant's defense or claim vis a vis the claim by the decree-holder who is now possessed with a decree of the court. Without such material, the court finds no basis to stay a decree indefinitely and for unknown reasons.
 13. Coming to review of the decree, an applicant must specify under what ground the review should be based on the review application must be brought without unreasonable delay. The mistake error apparent on the face of the record, new material, or other sufficient material must be demonstrated under Section 80 of the [Civil Procedure Act](#).
 14. The discretion to review has to be invoked based on the three limbs as stated in [Pancreas T. Swai vs Kenya Breweries Ltd](#) (2014) eKLR. In [Stephen Githua Kimani vs Nancy Wanjira Waruinge t/a Providence Auctioneers](#) (2016) eKRL, the court observed that an application for review would only be allowed on substantial grounds, particularly if its effect will amount to reopening the application or a case afresh. Other than alleging ownership of L.R No. Nthimbiri/Igoki/668 by her late husband, the applicant has not attached a copy of a title deed or an official search. The court cannot speculate



or assume such facts. The upshot is that I find the application lacking merits. The same is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERUON
THIS 19TH DAY OF JUNE, 2024.**

HON. C K NZILI

JUDGE

