



**Abeid v Abdulhussein (Enviromental and Land Originating Summons  
31 of 2022) [2024] KEELC 4876 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4876 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 31 OF 2022  
FM NJOROGE, J  
JUNE 12, 2024**

**BETWEEN**

**SALIM ISLAM ABEID ..... APPLICANT**

**AND**

**IMRANALI CHANDABHAI ABDULHUSSEIN ..... RESPONDENT**

**RULING**

1. By an application dated 13<sup>th</sup> March 2024, the Applicant herein seeks review of the Judgment delivered by Honourable Lady Justice (Dr.) M.A Odeny on 17<sup>th</sup> October 2023. The Applicant seeks the following Orders:
  - a. Spent.
  - b. That Honourable Court be pleased to review and/or vary its ruling that was delivered by Honourable Lady Justice M. A. Odeny on 17<sup>th</sup> October, 2023 by ordering the Registrar of Titles Mombasa County to delete entries in favour of the Respondent in respects to LR No. MN/III/2483 being Plot No. MN/III/2483 whose title is registered in Mombasa County.
  - c. That this Honourable Court be pleased to make such further orders as are necessary for the ends of justice to be met.
  - d. That the cost of the application be provided for.
2. This application is founded on the grounds:
  1. That through a Judgment delivered on 17<sup>th</sup> October, 2023 by Lady Justice M.A Odeny, the Applicant's Originating Summons dated 11<sup>th</sup> May, 2022 was allowed. However, the Judgment containing the order to have the Registrar of Titles, Kilifi County delete entries in favour of the Respondent in respects (sic) to L.R. No. MN/III/2483 being Plot No. MN/III/2483 cannot be effected being that the title of the suit property, L.R No. MN/III/2483 being Plot No. MN/



III/2483 is registered in Mombasa County and not Kilifi County thus the Applicant cannot move forward with the process of transfer;

2. That there is no prejudice that will be occasioned upon the Respondent if the application herein is granted;
  3. That the Applicant is ready and willing to abide by any reasonable conditions that the Court may deem fit to impose in granting the orders sought herein;
  4. That it is in the interest of justice and fairness that this application made by the Applicant herein be allowed in its entirety.
3. What the applicant is not stating clearly is that by an error in the originating summons he described the land as falling within the Kilifi Registrar of Titles' jurisdiction and not Mombasa Registrar of Title's jurisdiction and they now want the court to rectify that anomaly so that they may execute the judgment. Prayer no 3 in the originating summons read as follows:
- “That the Registrar of Titles Kilifi county do delete entries in favour of the respondent if any on the green card /register and/or register the appropriate discharge in respect thereof without gazettelement.”
4. The application is unopposed. However, amendment of a judgment and decree is not a matter of little consequence especially in matters concerning land and especially where the potential ramifications of the purported mistake may great.
  5. The reason I take the above position is that judgments and decrees emanate from a court's findings on pleadings and the trite rule has been that pleadings bind the parties. The plain question that arises in the present circumstances is what, in view of the pleadings, has been proved and in respect of what party .
  6. In this case the court did not enumerate the orders granted one by one; it only stated that the applicant has proved his claim, and that fact per se adds to the complexity of the situation and further renders it improper to grant a review order as prayed.
  7. I find that the present claim was proved in respect of only the matters and persons named in the Originating summons and no other and that unless the principal pleading that gave rise to the judgment has been amended, this court can not entertain or grant the orders sought in the present application.
  8. Consequently, I find that the motion dated 13<sup>th</sup> March 2024 lacks merit and it is hereby struck out with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 12<sup>TH</sup> DAY OF JUNE 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

