



**Muriti & another v Kigia (Environment & Land Case
E014 of 2022) [2024] KEELC 5307 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5307 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E014 OF 2022**

CK YANO, J

JULY 18, 2024

BETWEEN

JOSPHAT MURIUNGI MURITI 1ST PLAINTIFF

LUSETA M'MURITHI 2ND PLAINTIFF

AND

MICHAEL KUNGU KIGIA RESPONDENT

RULING

1. This ruling relates to the defendant/applicant's notice of motion application dated 1st February, 2024 seeking for orders-;
 1. That this Honourable court do issue an order that the matter be heard firstly ex-parte.
 2. That the Honourable court do issue an order that the ruling issued on 14th day of December, 2023, prayer (c) and prayer (d) entirely affect the applicant herein as order issued on 13th July, 2023 were disobeyed by the plaintiff/respondent with impunity the cause of the suit.
 3. That the Honourable court do issue an order that the estimated cost of implementation of prayer (c) and (d) be condemned on the respondent herein that is over Kshs. 300,000/= (three Hundred Thousand shillings) to be incurred as are aware of the fraud in this suit (sic)
 4. Cost of this application be awarded to the applicant herein.
2. The application is said to be brought under Order 51 Rule 1 of the *Civil Procedure Rules* 2010, Section 3, 3A and 63(e) of the *Civil Procedure Act* Chapter 4 on the Bill of Rights and Articles 27, 35 and 40 of the *Constitution* of Kenya, 2010 and other enabling provisions of law. The application is based on the grounds on the face of the motion and supported by the affidavit of the applicant sworn on 1st February, 2024, and a further affidavit dated 15th February, 2024.



3. The applicant states that he wrote to the Deputy Registrar of the High Court at Meru for correction of errors in the ruling issued on 14th December, 2023 in prayer (c) and (d) but in vain. That it is on record that the respondent herein is supposed to bear the responsibility of the order issued on 14th December, 2023 to prove that there are no permanent buildings on the disputed land parcels Abothuguchi/lower Kaongo/700 and 701 as the court dismissed their application dated 27th September, 2022 vide the ruling delivered on 7th June 2023 and allowed the applicant's application dated 6th July, 2023 with costs. While referring to Chapter 4, Articles 10, 35, 27 and 40 of the Constitution, the applicant states that it is unconstitutional to order him to bear the burden of proof. The applicant requests the court to condemn the respondents herein to meet the costs so as to be an example of land cartels in Meru.
4. The applicant states that the implementation costs shall be not less than Kshs. 300,000/= and asked the court to note that the respondent herein has a criminal case at Githongo Law Court on the same issue of fraud. The applicant states that he shall ensure that the Director of CID has examined the signatures as ordered, but noted that the same shall incur costs. The applicant prays for the court to order the respondent to meet the cost of the implementation of the orders as he is using the court in a dishonest way to punish the applicant since the ruling was issued by the court.
5. The applicant states that he is a certified professional mediator and that the remuneration of mediators in Africa is Kshs. 300,000,000/= (Three Hundred Million Kenya shillings per seven (7) days and that the Constitution of Kenya, 2010, Chapter 1 is referred and local payment per one hour is Kshs. 30,000/= to Kshs. 50,000/= according to the area as mediators are paid hourly.
6. In the supporting affidavit, the applicant avers that the court corrects the errors in the ruling issued on 14th December, 2023 in part (c) and (d) which extremely affects the applicant herein. That the application dated 16th July, 2023 and filed on 10th July, 2023 was not opposed by the respondents nor did they comply with the court orders issued on 13th July, 2023, thus showing impunity.
7. The applicant avers that the plaintiff's motion dated 27th December, 2022 and application dated 6th July, 2023 have merit according to court record, and the court cannot by law circumvent its rulings and order the applicant to bear the costs of the implementation of the orders as the burden of proof must be borne by the plaintiff to prove existence of permanent buildings or estate as alleged in Abothuguchi/lower Kaongo/700 and Lower Kaongo/701 as the applicant had already proved non-existence and (the respondent) ought to be ordered to prove payment of survey fees, land registrar fees, labor, costs of security and provide fees for court visit, among others, in order to prove sincerity of the matter, otherwise it shall be unconstitutional to order the applicant to bear the costs. That the applicant shall bear the fees charged by the Director of CID for investigations of irregular signatures as recorded by the ruling.
8. The applicant avers that he is a mediator in Kenya appointed by the Chief Justice of Kenya to supervise operation of mediations in courts in Kenya since 2021. He asked the court to note that this matter is initiated by a lawyer to defraud the applicant his lands as is the issue in Meru on fraud as seen on fraud Criminal case No. E011/2023, E0368/2023 and E0427/2023 that have ended up in the High Court in Misc. Application No. 22/2023 and Misc. Application No. 55/2023 before the presiding judge that were not opposed, hence corruption ruling issued from Judiciary Nairobi (M.A.C) Judicial Officers who are against mediation in Meru and against the applicant. The applicant further stated that without a court order, he was locked in G.K Prison Meru as Judicial suicide (sic) on 10th March, 2023 by lawyers in Meru, which he termed as a serious issue in Kenya and as an extension of this suit by the same lawyers.



9. The applicant also urged the court to order the plaintiff/respondent to implement or withdraw the suit with costs, or alternatively accept to deposit in court Kshs. 300,000/= for implementation of the order or the applicant shall implement and then the respondent be held responsible. The applicant states that he is not against the opinion of the court but if court issues its orders shall be complied with. That if the orders prayed for in the motion are not issued, the applicant shall suffer untold suffering and damage.
10. The plaintiffs/respondents opposed the application and filed a replying affidavit dated 6th February, 2024 sworn by Josphat Muriungi Muriti, the 2nd respondent herein. It is the respondents' contention that the application is a sham, vexatious, confusing and a waste of court's process and that the same should be dismissed with costs to the respondents.
11. The respondents aver that they are strangers to and therefore deny the contents of paragraph 1 of the supporting affidavit as there are no errors apparent in the said ruling. In response to paragraph 3 of the supporting affidavit, the respondents relied on the case of *Mary Wambui Kabguo Vs Kenya Bus Service Limited* [1997] eKLR where the court of appeal stated:

“The age long principle of law is that he who alleges must prove”
12. The respondents are opposed to the payment of any costs/fees/expenses for site visit and state that the applicant should bear such costs as he is the one who applied for it. That the applicant admitted that there is a shelter in the suit land parcels which is in line with the respondents' claim that they have constructed a semi- permanent structure in the suit land. The respondents put the applicant to strict proof on the alleged fraud. That otherwise, the application and the supporting affidavit by the applicant are intelligible, confusing and not clear on what the applicant is seeking from court. The respondents urged the court to dismiss the application with costs.
13. The application was canvassed by way of written submissions. The applicant in person filed his submissions dated 15th February, 2024 while the respondents filed theirs dated 11th March 2024 through the firm of G.M Wanjohi, Mutuma & Co advocates. I have read and considered the said submissions and I need not reproduce the same in this ruling.
14. I have considered the application, the response and the submissions filed. In the application, the applicant is seeking orders which in my view are unintelligible and incomprehensible. However, my reading and understanding of the application is that the applicant seeks to review the ruling of this court delivered on 14th December, 2023 with regard to prayers (c) and (d) thereof. I will therefore proceed to determine the application as one for review.
15. By an application dated 6th July, 2023, the applicant herein sought for an order to have the signatures of the respondents herein verified by the Director of Criminal Investigations, an order for the Land Registrar and the District Surveyor Meru to establish existing boundaries of land Parcel Nos Abothuguchi/lower Kaongo/700 and Abothuguchi/lower Kaongo 701, an order for a site visit by the court, an order directed to 2nd respondent herein to deposit the title deed in court and to meet the costs of the site visit and for costs of the application to be borne by the respondents herein. In the said ruling of 14th December, 2023, the court declined to grant the prayers for verification of the respondents' signatures by the Director of Criminal Investigations, the prayer for the Land Registrar and District Surveyor Meru to establish existing boundaries of the said parcels of land and the prayer for the 2nd respondent herein to deposit in court the title deed and to meet the costs of the site visit. The court however allowed the applicant's prayer for a site visit by the court. Further, the court ordered that the applicant herein was to meet the costs of the said site visit and costs of the application. From a reading



of the application herein, it is my understanding that the application seeks a review of the latter prayers, that is the one for costs of the site visit and of the application.

16. Section 80 of the *Civil Procedure Act* Cap 21 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 review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

17. Order 45 Rule 1 of the *Civil Procedure Rules* provides as follows-;

“ 1(1) 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, or an 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 judgment to the court which passed the decree or made the order without unreasonable delay.”

18. In *Republic V Public Procurement Administrative Review Board & 2 others* [2018] eKLR it was held;

“Section 80 gives the power of review and order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds-;

- a) discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- b) on account of some mistake or error apparent on the face of the record, or
- c) for any other sufficient reason and whatever the ground, there is a requirement that the application has to be made without unreasonable delay.”

19. It has also been held that a review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier.

20. In this application, the applicant is seeking review on costs that were awarded in the ruling delivered by this court on 14th December, 2023. The said costs were for both a site visit sought by the applicant



and for the application since most of the prayers sought by the applicant were dismissed. Section 27 of the [Civil Procedure Act](#) provides as follows-;

“27. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all the necessary directions for the purposes aforesaid, and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers, provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”

21. The issue of costs is therefore at the discretion of the court as provided under the above Section. It is also the basic rule on attribution of costs that costs follow the event. In the case of [Jasbir Rai & 3 others V Torlochan Rai & 4 others](#) [2014] eKLR, the Supreme Court of Kenya held that good reason for departing from the general rule would include public interest and the circumstances of the case.
22. Considering the circumstances of this case, and in particular the fact that the application dated 6th July, 2023 was by the applicant and the subsequent ruling dated 14th December, 2023, was largely unsuccessful, I believe that I exercised my discretion fairly, and justly in awarding costs to the respondents herein as compensation for the trouble they took in defending the said application. In addition, since it was the applicant who asked for a site visit which was opposed by the respondents, in my view, it was only reasonable, fair and just that the applicant shoulders the costs for such site visit.
23. Therefore, in my view, the applicant has not met the prerequisites set out in Order 45 of the [Civil Procedure Rules](#). Although the application was filed timeously, there is no sufficient cause shown why I should review the ruling dated 14th December, 2023 with regard to the said costs. I find no reason to review the orders on costs as sought by the applicant herein.
24. In the result, I find that the application dated 1st February, 2024 is devoid of merit and the same is dismissed with costs to the respondents.
25. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF JULY, 2024

IN THE PRESENCE OF

Court Assistant – Tupet

Maina holding brief for Mutuma for plaintiff

C.K YANO

JUDGE

