



**Loukoyang v Chebon (Environment & Land Case 169 of 2017)  
[2024] KEELC 6459 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6459 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 169 OF 2017  
AK BOR, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**JAMES L LOUKOYANG ..... PLAINTIFF**

**AND**

**ZAKARIA CHEBON ..... DEFENDANT**

**RULING**

1. Through the application dated 14/12/2023, the Plaintiff seeks the review or variation of the judgment delivered on 31/5/2017 by the Lady Justice M. Oundo so as to have prayers (a) and (c) of the plaint allowed.
2. The application was made on the grounds that the Learned Judge found that the Defendant had trespassed on the Plaintiff's land and went ahead to award compensation for damages and trespass. The Plaintiff contended that there is an error on the face of the judgment in that the court failed to make a finding on the prayers seeking eviction of the Defendant under the supervision of the Officer Commanding the Kinamba Police Station and a permanent injunction to restrain the Defendant from interfering with the suit property.
3. The Plaintiff swore the affidavit in support of the application and exhibited a copy of the judgment. He stated that when he applied for a decree following entry of the judgment, he was informed that the court had only awarded compensation for damages and trespass as well as costs but not the other prayers. He averred that it would be in the interest of justice if the orders he seeks were granted by this court and added that the Defendant would not be prejudiced by the grant of the orders.
4. Despite being served, the Defendant did not file a response to the application.
5. The court has read and considered the written submissions filed by the Plaintiff. The Plaintiff relied on Order 45 Rule 1 (b) of the *Civil Procedure Rules* which lists the grounds for review and added that having found that the Defendant had trespassed on his land and that he was the registered owner



of the suit property, there was an error on the face of the record since the decree only provided for compensation for damage and trespass yet the Learned Judge had made a finding that the Plaintiff was dispossessed of the suit property.

6. The Plaintiff relied on *Paul Mwaniki v National Hospital Insurance fund board of Management* [2020] eKLR on what constitutes an error on the face of the record and urged the court to allow the application.
7. In the suit filed on 31/7/2014, the Plaintiff sought three main orders, that is, eviction of the Defendant from the suit land, damages for trespass and a permanent injunction to restrain the Defendant from interfering with or dealing with the suit property. In the judgment delivered on 21/5/2017, Lady Justice M.C Oundo found that the Plaintiff had proved that he was the registered proprietor of the suit land, which is Laikipia/Uaso Narok/1096. The court assessed the compensation due to the Plaintiff for being dispossessed of his land because it court was satisfied that the Defendant had taken possession of the suit property thereby dispossessing the Plaintiff.
8. It is apparent that there was an error in the judgment where the court did not grant prayers (a) and (c) for eviction and a permanent injunction respectively sought by the Plaintiff in the suit. This is evident and supported by the findings made by the court and the fact that the Learned Judge awarded the Plaintiff compensation for trespass against the Defendant.

The application dated 14/12/2023 is allowed in terms of prayer 1.

**DELIVERED VIRTUALLY AT NANYUKI THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Waichungo Martin for the Plaintiff

No appearance for the Defendant

