



**Lesire & 3 others v Lemaron (Environment & Land Case 443 of 2017)  
[2024] KEELC 6160 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6160 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 443 OF 2017  
MN GICHERU, J  
SEPTEMBER 24, 2024**

**BETWEEN**

**SUNTE NENKALASH LESIRE ..... 1<sup>ST</sup> APPLICANT  
MIROIK NENKALASH LESIRE ..... 2<sup>ND</sup> APPLICANT  
SERENOI NENKALASH LESIRE ..... 3<sup>RD</sup> APPLICANT  
LERIONKE SUNTE NENKALASH ..... 4<sup>TH</sup> APPLICANT**

**AND**

**MBOI LEMARON ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 6/11/2023. The motion which is by the plaintiffs seek the following main orders.
3. That this court be pleased to review, set aside or vary the orders issued on 7/10/2021 and any other orders issued subsequently as against the applicant in this matter.
4. That costs of this application be provided for.
2. The motion is based on ten (10) grounds and is supported by the affidavit of Sunte Nenkash Lesire. In summary, the plaintiffs' case is as follows. Firstly, the judgment of 7/10/2021 was made without full material disclosure to the court by the defendant in that he did not disclose to the court that he was a grandson and not a son of the late Nenkash Lesire. Secondly, had the defendant disclosed this fact to the court, then the court would have arrived at a different conclusion because the defendant would have been ordered to claim from his own father and not his grandfather.



3. The motion is opposed by the defendant who has sworn a lengthy affidavit running into sixteen (16) pages. In the affidavit, he vehemently denies being a grandson of the deceased and says that he is the last born son of Jane Pion Nenkalah Lesire, the first wife of the deceased.
4. I have considered the motion in its entirety including the grounds and affidavits by both sides. Counsel for the parties were to file written submissions by 30/4/2024 but they did not do so. I find that the only issue for determination is whether the motion meets the threshold for review as per Order 45 (1) of the Civil Procedure Rules. For a matter to meet the said threshold, the applicant must establish the following.
  - i. Discovery of new and important matter or evidence which was not within his knowledge or could not be produced by him at the time when the decree was passed.
  - ii. Some mistake or error apparent on the face of the record.
  - iii. Any other sufficient reason.
5. In applying the threshold set out in above provision to this case, the first question to ask is when the plaintiffs discovered that the defendant is a grandson of the deceased and not a son. Was it before or after the judgement of 7/10/2021. In the affidavit by Sunte Nenkalah, it is not disclosed when he made this discovery. He only says that the defendant did not disclose. Definitely, the discovery was much earlier than after the delivery of the judgment. The applicants make it look like it was only the defendant who could disclose that he was a grandson and not a son. Obviously, this is not the case. It was up to them to expose the weakness of their rival in this contest. Nobody stopped them from doing this. They had all the liberty to say this in their pleadings, evidence and even submissions. They never did. This issue of the defendant's paternity was given three (3) paragraphs in the judgment of 7/10/2021. It is therefore not new. The court made a firm decision on it.
6. The second limb of mistake or error apparent on the face of the record has not been met either. The applicants have not said there is an error or mistake in the judgment of 7/10/2021. A mistake or error apparent on the face of the record has been described as one which stares at the court in the face. It is so obvious that it cannot escape the notice of the court. No such mistake or error exists in this case.
7. The final limb of the threshold is any other sufficient reason. No sufficient reason has been raised. In fact what has emerged is that the court is being asked to re-open the case to deal with an issue that should have been made the core of the trial by the plaintiffs but which they chose not to. Litigation must come to an end.
8. For the above stated reasons, I find no merit in the motion dated 6/11/2023 and I dismiss it with costs to the plaintiff.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**M.N. GICHERU**

**JUDGE**

In the presence of:

Mr. Mukuha for the plaintiff -present

