



Commissioner of Lands v Heirs of the Late Wambugu Mathangani (Environment & Land Case 9 of 2009) [2024] KEELC 5971 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5971 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ENVIRONMENT & LAND CASE 9 OF 2009

JO OLOLA, J

SEPTEMBER 20, 2024

IN THE MATTER OF THE LAND ACQUISITION ACT (CAP.295)

AND

THE COMPULSORY ACQUISITION OF. LR. NO. AGUTHI/GATTITU 3447

AND

IN THE MATTER OF AN APPLICATION BY THE COMMISSIONER OF LANDS FOR THE DETERMINATION OF THE PERSONS ENTITLED TO COMPENSATION FOR THE COMPULSORY ACQUISITION OF LR. NO. AGUTHI/GATTITU/3447

BETWEEN

COMMISSIONER OF LANDS APPLICANT

AND

HEIRS OF THE LATE WAMBUGU MATHANGANI RESPONDENT

RULING

1. By the Notice of Motion dated 19th December 2023, Messrs Peter M. Muthoni & Company Advocates (the Applicants) prays for orders as follows:
2. That this Honourable Court may be pleased to revisit the Judgment it pronounced herein, on the 23rd of September 2015, by enhancing the same, in light (of) new vital developments, namely, the enhanced compensation for the subject property herein, by Kshs. 80,000,000/= only, in Nyeri ELCA 1 of 2017, Kshs. 38,000,000/= only, as taxed Appeal costs therefore, and the long passage of time;
3. That this Honourable Court may at least, increase counsels' fees by first, by the same ratio this Honourable Court increased the compensation award, secondly share the Kshs. 38,000,000/



= only, the taxed costs among all counsels, and thirdly, add accrued interest at court rates for the years elapse (sic) from the date of Judgment to date; and

4. That this Honourable Court may be pleased to provide for costs of this application.
2. The application is supported by an Affidavit sworn by Mr. Peter Mwangi Muthoni Advocate wherein he deposes at the relevant Paragraphs 2 to 5 as follows:

- “2. That this Honourable Court pronounced Judgment herein on 23/09/2015 setting apart Kshs. 8,500,000/= only as counsel’s fees from Kshs. 145,595,750, the land compensation money herein;
3. That by Nyeri ELCA No. 1 of 2017 (formerly Nairobi ELCA No. 99 of 2015), this Honourable Court enhanced the stated compensation money by Kshs. 80,000,000/= only;
4. That thereafter, the taxing Master of this Honourable Court taxed costs in the Appeal, at a whooping Kshs. 38,000,000/= only;
5. That both stated additional sums impact on counsel’s Kshs. 8,500,000/= only, directly hence our returning to this Honourable Court, seeking proportional enhancement;
6. That it is right and just for this Honourable Court to Intervene, and adjust the sum of Kshs. 8,500,000/= only upwards, by the same ratio this Honourable Court increased the compensation award, secondly share the taxed costs of Kshs. 38,000,000/= only, among all entitled counsel, and thirdly, add accrued interest at court rates for 8 calendar years, from date of Judgment to date.”

3. I have carefully perused and considered the application which was not opposed by the other parties. The application before me is expressed to be instituted pursuant to the provisions of Order 45 Rules 1 and 2 of the Civil Procedure Rules. The said Rules provide as follows:

- “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 on 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 the Judgment to the court which passed the decree or made the order without unreasonable delay;
- 2). A party who is not appealing from a decree or order may apply for a review of the Judgment of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being



respondent, he can present to the appellate court the case on which he applies for the review.”

4. Arising from the foregoing, courts have the discretion to allow review on three grounds, namely; where there is discovery of new and important matter of evidence; where there is an apparent error on the face of the record and where there is sufficient reason to do so, ultimately, the application for review must be made without undue delay.
5. A perusal of the 13- Paragraph Supporting Affidavit of Peter Mwangi Muthoni Advocate does not make it very clear as to which of the three grounds his application falls in. What counsel appears to be saying is that in a matter he refers to as Nyeri ELCA No. 1 of 2017 (formerly Nairobi ELCA No. 99 of 2015) a decision was made enhancing compensation money by Kshs. 80,000,000/= and that the taxing master taxed the costs due at Kshs. 38,000,000/=.
6. Counsel does not point out when those decisions were made and how they relate to this case. He has not attached either of the decisions said to have been made in the said Nyeri ELCA No. 1 of 2017 and this court was unable to speculate on the exact reasons why the Applicant urges the court, in his words, “to revisit” the Judgment pronounced herein on 23rd September 2015.
7. In the premises, I was unable to find any merit in the Motion dated 19th December 2023. The same is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF SEPTEMBER, 2024.

In the presence of:

Mr. Makura holding brief for Gori for 32nd and 36th Interested Parties.

Ms. Kisengeri for the NLC.

No appearance for the Applicant.

Court Assistant: Michael

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J. O. OLOLA

JUDGE

