



**Chirchir (Also known as John Chirchir) v Bor (Environmental and Land Originating Summons 13B of 2021) [2025] KEELC 560 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 560 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 13B OF 2021  
A OMBWAYO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**JONAH KIPLAGAT CHIRCHIR (ALSO KNOWN AS JOHN CHIRCHIR) ..... APPLICANT**

**AND**

**MOSES KIPKURUI SA BOR ..... RESPONDENT**

**RULING**

1. On the 23<sup>rd</sup> March, 2023, judgment was delivered in this matter and a decree issued granting the plaintiff an overriding interest under Section 28(h) and (i) of the *Land registration Act*, 2012 (Cap 284) Laws of Kenya in the Land Parcel' LR NO; LEMBUS/SIGORO/EXTENTION/03. The court further declared that the plaintiff is in adverse possession of the parcel of land known as IR NO. LEMBUS/SIGORO/EXTENTION/03. The court further vested the suit land LR NO. LEMBUS/SIGORO/EXTENTION/O3 in the plaintiff. The Defendant was ordered to execute the necessary conveyance documents to effect the registration of the plaintiff as the proprietor of the suit land, Failure to execute the deputy registrar was at liberty to sign all documents to transfer the rights and interests to the plaintiff upon LR NO.LEMBUS/SIGORO/EXTENTION/03. The court ultimately ordered that each party was bear its own costs.
2. The plaintiff herein moved this Honorable court by Notice of Motion dated 7 September, 2024 seeking for the Review of the judgement to include surrender and/or cancellation of the original land certificate in respect to Title Number, L.R. NO. LEMBUS/SIGORO EXTENTION/03 in possession of the defendant before the plaintiff can be registered as the owner.
3. The orders sought in the foresaid Notice of Motion were vehemently opposed by the Defendant/ Respondent. The defendant/Respondent submits that the Notice of Motion is frivolous vexatious, untenable in law and amounts to an abuse of the court process. According to the defendant, the plaintiff/Applicant is seeking for substantive orders of cancellation of original land title certificate



known as I-R NO, LEMBUS/SIGORO/EXTENTION/03 which was never pleaded in the plaintiff's suit. That in light of the prayers sought hereinabove the plaintiff neither planned for the cancellation of the title deed document nor a prayer original Lease Certificate either to the Land Registrar or to this Honourable court

4. The defendant submits that the power of a civil/or land court to- review its judgement /decision is traceable in Section: 80 of the Civil- Procedure Act and the grounds on which review can be sought are enumerated in Order45, Rule 1 of the: Civil Procedure Rules. Indeed Review is provided for under Section 80 of the. Civil Procedure- Act, It states as follows:-

that any person: who considers himself aggrieved by: a decree or order from which an appeal is allowed by this Act but from which no appeal been preferred or by a decree or: order from which no appeal is adhered to by this Act, may apply for a review of judgement to the court which passed the decree or made the order and may make, such orders thereon as it thinks fit.”

5. The defendant contends that Order 45 of the Civil Procedure Rules provides that any person considering himself aggrieved by e decree who from discovery of new and important matter or evidence after due diligence was not within his knowledge or mistake apparent on the face of the record.
6. The respondent contends that courts have the discretion to allow review on grounds namely:-
  - (a) : Where there- is discovery of new and important matter of evidence:
  - (b) Where there is an apparent error on the face of the record.
  - (c) : Where the application is made without undue delay the court may in exercise of it its inherent powers review any of its judgement ruling or orders so as to meet the ends of justice.
7. The defendant cites with approval the case of Ndungu Njau vs, National Bank of Kenya Limited Civil Appeal No. 257 of 2002 the Court of Appeal expressed itself as follows:

Neither in the application, its grounds or supporting affidavit nor in the instant appeal was or has been raised any important matter or evidence which was not within the knowledge of the appellants at the time the decree was passed in spite of exercise of due diligence which requires strict proof,, Nor was there any submission before the Court about any mistake or error apparent on the face of the record to warrant an order of review which was sought .The error or omission on record must be self-evident on the part of the court and should not require elaborate argument in order to be established... There was no reference to such mistake or error before the trial Court and the grounds of appeal in the instant appeal do not point to any such omission or error."

8. The defendant relies on the principles in *Oakley v Royal Bank of Canada* {2013} ONSC 145 {2013} OJ NO. 109 SC It was stated:

"The Court requires the parties to mitigation to bring forward their whole case, in both civil and criminal matters, the crown and plaintiff must produce and enter in its own case all clearly relevant evidence it has On the other hand, a trial judge has the discretion to permit a plaintiff to reopen -its case. This discretion however must be exercised judicially. It must involve a scrupulous balancing of the accountability of counsel for decisions regarding the prosecution of its case and the interest of justice"



9. In light of the foregoing, the defendant contends that the orders of review seeking for surrender or cancellation of the title documents which has never been pleaded in the plaintiffs plaint or originating summons cannot be granted at this stage as the plaintiff cannot be accorded the opportunity to rebut to the new issues raised,
10. The Defendant ultimately submits that the plaintiff needs to re-apply to set aside judgement and seek for prayers on surrender and/or cancellation of the title documents which is in possession of the defendant since 1984.
11. The Defendant had filed a suit against the Plaintiff herein vide NAKURU HCC NO, 763 OF 1992 (Moses Kipkurui vs John Chirchir) where it was decreed that the Defendant was the registered owner of the suit parcel of land having obtained the title documents in the year 1984 and occupied the same till 1992 when the plaintiff herein forcefully occupied 10 Acres out of the 22 Acres till to date. The plaintiff is holding the title documents hence the new order for review to have him surrender the same to the plaintiff will tantamount to gross miscarriage of justice to the Defendant and entire family. It's therefore the Defendant's submission that the orders sought by the plaintiff should be disallowed as this will amount to condemning the Defendant before being heard.
12. I have considered the rival positions of parties and do find that the applicant seeks an order for the Review of the judgment to include surrender and/or cancellation of the original land certificate in respect to Title Number, L.R. NO. LEMBUS/SIGORO EXTENTION/03 in possession of the defendant before the plaintiff can be registered as the owner. This order if granted will be a departure from the order granted by the court. Moreover, the court granted the plaintiff what he prayed for. For avoidance of doubt, the court ordered the defendant to execute the necessary conveyance documents to effect the registration of the plaintiff as the proprietor of the suit land, failure to execute the deputy registrar, Environment and Land Court was at liberty to sign all documents to transfer the rights and interests to the plaintiff upon LR NO.LEMBUS/SIGORO/EXTENTION/03.
13. Defendant was ordered to execute the necessary conveyance documents to effect the registration of the plaintiff as the proprietor of the suit land, Failure to execute the deputy registrar was at liberty to sign all documents to transfer the rights and interests to the plaintiff upon LR NO.LEMBUS/SIGORO/EXTENTION/03 .This court cannot grant a contrary order to the plaintiff in a review.
14. The Defendants have cited Section 80 of the *Civil Procedure Act*, and Order 45 of the Civil Procedure Rules 2010. Section 80 of the *Civil Procedure Act* states as follows;
  80. 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 a 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.”
15. Order 45 of the Civil Procedure Rules 2010 also states thus;-
  45.
    - 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

16. 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 reasons, desires to obtain a review of the decree or order may apply for a review of judgment to the court which pass the decree or made the order without unreasonable delay”
17. The above provisions circumscribe the jurisdiction of the Court in an application for review. The conditions in Order 45 of the Civil Procedure Rules 2010 have to be satisfied.
18. The Applicants came under section 80 and Order 45 of the CPA and CPR, respectively, and have not satisfied the standard as stated in *Kithoi v Kioko* (1982) KLR 177, page 181, by the Court of Appeal that;

.....the Civil Procedure Rules Order XLIV demands inter alia, that an application for review must be based in the discovery of new and important evidence which was not within the applicant’s 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 on the face of the record or for any other sufficient reason. The application for review must strictly prove the grounds for review, except for review on the ground of mistake or error apparent on the record, falling which the application will not be granted.”

19. The orders sought by the plaintiff cannot be granted because they will contradict the orders sought in the plaint and issued by the court in its judgment. The upshot of the above is that the application is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**A.O.OMBWAYO**

**JUDGE**

