



**Kagwanja v Town Council of Molo & another (Environment & Land Case 85 of 2013) [2024] KEELC 7010 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7010 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 85 OF 2013**

**A OMBWAYO, J  
OCTOBER 17, 2024**

**BETWEEN**

**GEOFFREY KAGWANJA ..... PLAINTIFF**

**AND**

**TOWN COUNCIL OF MOLO ..... 1<sup>ST</sup> DEFENDANT**

**THE TOWN CLERK, COUNTY COUNCIL OF MOLO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This court concluded this matter by way of judgment dated 15th February 2024 wherein an order of eviction and demolition of structures on the land was issued against the plaintiff. The plaintiff was given 90 days to vacate the premises. The court further issued an order of permanent injunction restraining the plaintiff from entering remaining in, trespassing, developing, cultivating and in any manner dealing with the suit property. The plaintiff now seeks to review the judgment made on 15th February 2024. The plaintiff relies on the ground that there was discovery of new evidence which after due diligence could not be produced by him at the time the order was made.
2. According to the plaintiff, judgment was delivered on 15th February 2024, but prior to entry of judgment the plaintiff even after exercise of due diligence could not access the survey maps and documentations during that time due to digitization exercise. Moreover, that the file was lost due to digitization.
3. The 5th defendant through the administratrix Jacinta Wairimu Kimani states that the application is baseless, bad in law, misplaced, inept frivolous and abuse of court process. The respondent states that there is no evidence that the plaintiff commenced a search and a surveyor to conduct a survey. The respondent states that there is no survey plan at all.

4. I have considered the material placed before me in this matter. Order 45 rule 1(b) of the Civil Procedure Rules, provides 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 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 judgment notwithstanding the pendency 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.”

5. The foregoing provisions are based on section 80 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya which states 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 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.”

6. The above provisions lay down the jurisdiction and scope of review. They limit review 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 un reasonable delay.

7. This court does not see the new and important evidence that has been discovered by the applicant. What he calls a survey map is not a survey map per se as the same is not certified. Even if it was a proper map, the document does not make any important shift in the plaintiff's case. Moreover, the plaintiff has not demonstrated that he made any serious effort to obtain the said documents from the lands office before the case was determined. The plaintiff could have obtained the documents before judgment if

he made serious efforts. This court finds that there is no evidence of due diligence. No letter has been availed calling for the said document before judgment. The application lacks merit and is dismissed with costs.

**RULING DATED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 17TH DAY OF OCTOBER 2024.**

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**