



**Republic v Kajiado North Land Dispute Tribunal; Sangaire (Interested Party); Parantoi (Exparte) (Environment & Land Miscellaneous Case 27 of 2018) [2024] KEELC 6973 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6973 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND MISCELLANEOUS CASE 27 OF 2018  
LC KOMINGOI, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PLAINTIFF**

**AND**

**KAJIADO NORTH LAND DISPUTE TRIBUNAL ..... RESPONDENT**

**AND**

**KILI OLE SANGAIRE ..... INTERESTED PARTY**

**AND**

**SAILOJI OLE PARANTOI ..... EXPARTE**

**RULING**

1. This is the Notice of Motion dated 19<sup>th</sup> December 2023 brought under; (Section 1A, 3A, of the *Civil Procedure Act* Cap 21 laws of Kenya, Order 45 rule 2 Civil Procedure Rules 2010. Order 51 Rule 1 and all other enabling provisions of the law.)
2. It seeks Orders;
  1. Spent.
  2. Spent.
  3. Spent.
  4. That the Honourable Court be pleased to Review the Judgement dated 27<sup>th</sup> July 2023 and/or be set aside as there is an apparent error from the said Judgement.



5. That there be an Order directing an independent surveyor do a comprehensive report and make a site visit at the presence of all the parties concerned and affected by the instant dispute.
6. That the Honourable Court do issue any other relief deemed fit for the interest of Justice.
7. That cost of this Application be in the cause.
3. The grounds are on the face of the Notice of Motion and are set out in paragraphs 1 to 19.
4. The Application is supported by the Affidavit of Kili Ole Sankaire the Interested Party/Applicant herein, sworn on the 19<sup>th</sup> December 2023.
5. The Application is opposed. There is a Replying Affidavit sworn by the Sailoji Ole Parantoi the Exparte Applicant on the 11<sup>th</sup> April 2024.
6. On the 23<sup>rd</sup> April 2024 the court with the consent of parties, directed that the Notice of Motion be canvassed by way of written submissions.

### **The Interested Party's Submissions.**

7. They are dated 28<sup>th</sup> May 2024.  
They raise four (4) issues for determination;
  - i. Whether there is an error apparent on the face of the record.
  - ii. Whether the court has jurisdiction to review the said Judgement.
  - iii. Whether the Application satisfies the ground for review.
  - iv. Whether the said Report conforms with the Court Orders and the law.
  - v. Whether the Exparte Applicant would suffer any prejudice if the Application is allowed.
8. The Interested Party submitted that the surveyor's Report is not dated and that he did not show the surveyor his boundary. It is also submitted that the said Report is inconclusive and does not reflect the true nature of the dispute.
9. The Applicant further submitted that the surveyor concealed material facts for personal gain.
10. Reliance is placed on Section 80 of the *Civil Procedure Act* and Order 45 (1) of the Civil Procedure Rules and the cases of National Bank of Kenya v Ndungu Njau Civil Appeal NO. 2111 of 1996; Julius Kibiwott Tuwei Vs. Reuben Argut & 7 Others [2022] eKLR; Shah v Mbogo; [1979] EA116; John Mukuha Mburu v Charles Mwenga Mburu [2019] eKLR; Wachira Karani v Bildad Wachira [2016] eKLR.
11. The Interested Party has admitted that the only remedy available to him is review. He has put forward the case of Tokesi Mambili and Others v Simion Litsanga.  
It is further submitted that the Interested Party was not involved in the site visit.  
He has put forward the cases of Republic v Advocates Disciplinary Tribunal Exparte Apollo Mboya [2019] eKLR; Evan Bwire v Andrew Aginda; Civil Appeal No. 147 of 2006 cited in the case of Stephen Githua Kimani v Nancy Wanjira Waruinge T/a Providence Auctioneers [2016] eKLR; Sarder



Mohammed v Charan Singh Nand Singh and Another [1959] EA 793; National Bank of Kenya Ltd v Ndungu Njau [1996] KLR 469.

12. The Interested Party also submitted that the District Surveyor and the Land Registrar Kajiado North did not comply with the express orders of the Court. The Exparte Applicant shall suffer no prejudice of the exercise is repeated by an independent report.

He prays that the Application be allowed.

### **The Exparte Applicant's Submissions.**

13. They are dated 22<sup>nd</sup> June 2024.

They raise four issues for determination;

- i. Whether the court should review the order dated 27<sup>th</sup> July 2023 due to an apparent error on the orders.
- ii. Whether this Honourable Court should review the orders of 27<sup>th</sup> July 2023 based on new and important evidence or sufficient reasons for review, two grounds which were not previously pleaded in the Application.
- iii. Whether this Honourable Court should set aside the orders of 27<sup>th</sup> July 2023 and issued on 2<sup>nd</sup> November 2023.
- iv. Whether the Court should order another survey of the land parcels Kajiado/Olchoro-Onyore/26 and Kajiado/Olchoro-Onyore/27.
- v. Who should be awarded costs of this Application?

14. Reliance is placed on Section 8 of the [Civil Procedure Act](#) and Order 45 rule 1 of the Civil Procedure Rules. The Interested Party has failed to point out the error on the orders issued on 27<sup>th</sup> July 2023 to warrant a review as held by Mativo J in Republic v Medical Practitioners & Dentists Board & Another; M101 on behalf of M102 (a Minor) Interested Party; King'ang'a.

That most of the averments in the Supporting affidavit are complaints and expressions of the Interested Party's dissatisfaction with his previous Advocates; Obare Ratemo & Co. Advocates.

The claim that the Report was prepared in secrecy has not been proved.

15. The Exparte Applicant submitted that the Interested Party raises new issues in his submissions which the Honourable court is estopped from determining as it would occasion injustice to the Exparte Applicant.

He has put forward the case of Twaher Abdul Karim Mohammed v IEBC & 2 Others [2014] eKLR which cited with approval the case of Ann Wairimu Wanjohi v James Wambiru Muikabi [2021] eKLR.

This court ought not adjudicate over the issue of new evidence and sufficient reason not raised in the Notice of Motion dated 19<sup>th</sup> December 2023.

He has put forward the cases of Stephen Githua Kimani v Nancy Wanjira Muruingi t/a Providence Auctioneers [2019] eKLR ; Republic v Advocates Disciplinary Tribunal (Supra).

16. It is further submitted that an alleged error apparent in the record is not a ground to set aside an Order/Judgement.

He has put forward the case of Lelei & 2 Others v Kimetto & 30 Others KEELC 1220 (KLR).



17. It is also submitted that the Interested Party and his Advocates were not only served with the requisite notices and summons but were involved in the whole process of the survey culminating in the order dated 27<sup>th</sup> July 2023.

18. It is submitted that to repeat the survey process would be an abuse of the court process and only meant to delay the execution of the Orders of 27<sup>th</sup> July 2023.

He has put forward the cases of School Management Committee & another v Ezekiel Maritim and 2 Others [2014] eKLR; John Maritime Florence Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR; Re: Estate of the late Ismael Muchiri Nkinyangi (Deceased) [2021] eKLR.

19. It is submitted that ordering a resurvey would be res judicata.

He prays that the Application be dismissed with costs.

20. I have considered the Notice of Motion, the affidavit in support and the annexures. I have also considered the response thereto, the annexures, the rival submissions and the authorities cited. The issues for determination are;

- i. Whether the Judgement dated 27<sup>th</sup> July 2023 ought to be reviewed and or set aside as there is an error apparent on the record.
- ii. Who should bear costs of this Application?

21. Section 80 of the [Civil Procedure Act](#) provides that;

“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.”

Order 45 Rule 1 of the Civil Procedure Rules provides that:

“(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.”

22. The Interested Party’s case is that the said Judgement dated 27<sup>th</sup> July 2023 contains an error that is apparent on the record. In his supporting affidavit he depones that the site visit was conducted in his



absence and that the surveyor concealed all material facts pertinent to the determination of this suit for his personal gain.

23. The findings are in the survey Report which was adopted by this court on 27<sup>th</sup> July 2023 is dated 25<sup>th</sup> May 2022. The same was filed in court on the same date. The said exercise was conducted following the court order dated 3<sup>rd</sup> November 2021. The parties present were fifteen in number. Kili Ole Sankaire is listed as number 4 with his Identity card number given as 4555659. It is the Interested Party herein. In the supporting affidavit he does not give his Identity card number. It shows that he was present during the site visit.

24. No explanation has been offered as to why the surveyor would want to manipulate the list of those present on that date.

His claim that he did not attend the site visit is neither here nor there.

25. In the case of Republic v Medical Practitioners & Dentists Board & Another; M101 on behalf of M102 (a minor) & another (Interested Party; King'anga (Exparte) KEHC 298 KLR. Mativo J held thus;

“... A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.”

26. Similarly in the case of *Murican Transport Limited v Hunkar Trading Co. Ltd HCCC (Milimani) No.531 of 2006* Mabeya J made reference to the ruling in National Bank of Kenya Ltd v Ndungu Njau where the court stated;

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require any elaborate argument to be established. It will not be a sufficient ground for review that another Judge would have taken a different view of the matter. Nor can it be ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

27. I am guided by the above authority in finding that the Interested Party has not pointed out the error to be corrected.

28. I agree with the Exparte Applicant's submissions that most of the averments in the Interested Parties' affidavit are complaints and expressions of his dissatisfaction with his previous Advocates Obare Ratemo & Co. Advocates.

29. I find that he was involved in the whole survey process which culminated in the Judgement dated 27<sup>th</sup> July 2023.

30. I am not convinced that this court should order a repeat of the survey process.

31. The only ground put forth in the Notice of Motion dated 19<sup>th</sup> December 2023 was that there was an error on the face of the Judgement. The Interested Party's submissions on the other two grounds is misguided. This court cannot consider them.

32. The upshot of the matter is that I find no merit in this application and the same is dismissed. As the parties herein are neighbours I make no orders as to costs.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER 2024.**

**L.KOMINGOI**

**JUDGE.**

In The Presence of:

Ms. Wanga for Ms. Kibare for the Exparte Applicant.

N/A for the Respondent.

Mr. Getuma for the Interested Party.

Court Assistant – Mutisya.

