



**Jumbe v Rukwaro (Environment & Land Case E002 of 2020)
[2024] KEELC 75 15 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E002 OF 2020**

**JO OLOLA, J
NOVEMBER 14, 2024**

BETWEEN

IJILAL YUSUF JUMBE APPELLANT

AND

JOSEPH GITONGA RUKWARO RESPONDENT

RULING

1. By the Notice of Motion dated 23rd October 2023, Ijilal Yusuf Jumbe (the Applicant) prays for the following orders:
 1. That this Honourable Court be pleased to review, vary or clarify its Judgment delivered on 6th July 2023;
 2. That in granting prayer 1, this Honourable Court do declare and affirm the Appellant/applicant's proprietary interests in the suit land LR. Aguthi/Gatitu/11 and direct that the title issued to the Respondent be cancelled and reversed to the previous owners in terms of the Applicant's counterclaim;
 3. That the Honourable Court do issue an order declaring that the Judgment and decree issued in Nyeri CMLE 274 of 2018 was legal and binding;
 4. That this Honourable Court do issue any other order it may deem fit to grant in the best interest of justice; and
 5. That the costs of this application be borne by the Respondent.
2. The application is supported by an affidavit sworn by the Appellant and is premised on the grounds:-
 - a). That through the Judgment of this Honourable Court delivered on 6th July 2023, the Respondent/Plaintiff's suit was dismissed with costs;



- b). That though this Honourable Court declared the purchase of the suit property by the Respondent was void and of no consequence, the court did not cancel the Respondent's title and or declare it invalid; and
- c). That the Judgment is in-executable for reasons that the Respondent still holds a registered title.
3. Joseph Gitonga Rukwaro, (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 17th April 2024, the Respondent avers that the Motion is incompetent and an abuse of the process of the court as the orders sought are untenable.
4. The Respondent avers that the issues raised by the applicant expresses his dissatisfaction with the Judgment of this court and that the same cannot form the basis of a review but are grounds of appeal to a higher court. The Respondent further avers that the Applicant has not preferred any appeal like the Respondent has done in Nyeri Civil Appeal No. E194 of 2023 and thus the present application is meant to help the Applicant to steal a match on a matter pending before the Court of Appeal.
5. I have carefully perused and considered the application as well as the response thereto. I have also considered the submissions and authorities placed before me by the Learned Advocates acting for the parties.
6. By this application before the court, the Appellant urges the court to be pleased to review, vary or clarify its Judgment delivered herein on 6th July 2023. The Appellant further urges the court that in granting the first prayer herein, this court ought to declare and affirm the Appellant's proprietary interests in the suit land being LR. No. Aguthi/Gatitu/11 and direct that the title issued to the Respondent be canceled and be re-issued to the previous owners in terms of the Appellant's Counterclaim.
7. The gist of the Appellant's application is his contention that even though by the said Judgment this court did declare the purchase of the suit property by the Respondent as void, the court did not cancel the Respondent's title or declare the same invalid.
8. The Respondent is opposed to a review of the said Judgment. According to the Respondent the issues raised by the Appellant expresses his dissatisfaction with the judgment of this court and the same cannot form the basis of a review but are grounds of appeal.
9. In matters of review, Section 80 of the [Civil Procedure Act](#) provides 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.”
10. On the other hand, on the issue of correction of Judgments, Section 99 of the [Civil Procedure Act](#) provides as follows:-
- “ Clerical or arithmetical mistakes in Judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”



11. The above provision, ordinarily known as the Slip Rule permits a court of law to correct errors that are apparent on the face of the Judgment, Ruling or an Order of the court. However, such errors must be so obvious that their correction cannot generate any controversy regarding the Judgment or decision of the court.
12. In the matter before me, the Appellant had come to this court seeking to overturn a decision of the Nyeri Chief Magistrate's Court as delivered on 28th August 2022 in Nyeri MCL & E Case No. 62 of 2019. In the said matter, the Respondent had sought an order of permanent injunction restraining the Appellant from interfering with and/or trespassing into or occupying the parcel of land known as LR. No. Aguthi/Gatitu/11. The Respondent had also sought mesne profits as well as orders of vacant possession of the suit property on account that he was the absolute registered proprietor thereof and that the Appellant had trespassed therein.
13. In its Judgment as delivered on 28th August 2022, the Lower Court had found in favour of the Respondent and granted the orders sought in the Plaint.
14. That decision was however overturned by the Judgment of this court delivered on 6th July 2023 wherein this court set aside the decision and dismissed the Respondent's suit with costs to the Appellant.
15. As pointed out by the Appellant, the Judgment of this court did not in dismissing the Respondent's suit make any mention of the Appellant's Counterclaim in the Lower Court. By that Counterclaim, the Appellant had contested the legality of the Respondent's title and had sought for the following:
 - a). An order that the Land Registrar Nyeri be directed to cancel the registration of LR. No. Aguthi/Gatitu/11 in the name of Joseph Gitonga Rukwaro and subsequently alter the register to revert back to the name of Aisha Rajab Ramadhani (deceased);
 - b). An order restraining the Plaintiff from interfering with the peaceful occupation of the suit premises by the current occupants; and
 - c). That the Plaintiff do bear the costs of the suit and of the Counterclaim.
16. Having considered the issues herein, I was persuaded that there was merit in the Appellant's application as the court ought to have pronounced itself on the Appellant's Counterclaim. Accordingly, the Judgment delivered on 6th July 2023 is hereby varied as follows:
 - a). The Judgment of the Lower Court dated and delivered on 28th August 2020 is hereby set aside with an order that the Respondent/Plaintiff's suit is hereby dismissed.
 - b). The Appellant/Defendant's Counterclaim dated 18th December 2019 is allowed as prayed.
 - c). The Respondent shall bear the costs of the suit both in the Lower Court and in this Appeal.
 - d). Orders accordingly.

DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 14TH DAY OF NOVEMBER, 2024.

In the presence of:

Ms. Nanjala for the Appellant.

No appearance for the Respondents.

Court Assistant: Kendi.

.....



J. O. OLOLA
JUDGE

