



**Muriithi v Nyeri County Land Registrar (Environment and Land Judicial Review Case 1 of 2023) [2024] KEELC 13932 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13932 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2023**

**JO OLOLA, J**

**DECEMBER 20, 2024**

**BETWEEN**

**JOSEPH WAMBUGU MURIITHI ..... APPLICANT**

**AND**

**NYERI COUNTY LAND REGISTRAR ..... DEFENDANT**

**RULING**

1. By a Chamber Summons application dated 29<sup>th</sup> April 2013, Joseph Wambugu Muriithi (the Ex-parte Applicant) had sought for an order of mandamus to compel the Land Registrar Nyeri County (the Respondent) to perform its statutory duties under Section 38 of the *Land registration Act* No. 3 of 2012 by reconstructing the land register for the parcel of land known as Nyeri/Municipality Block 1/1257. In addition, the Ex-parte Applicant had sought an order of mandamus to issue to compel the Respondent to register him as the proprietor of the said parcel of land.
2. In a Ruling delivered herein on 19<sup>th</sup> January 2014, this court found no merit in the Chamber summons application and proceeded to dismiss the same with costs to the Respondent.
3. By the instant Notice of Motion dated 7<sup>th</sup> February 2024, the Applicant urges the court to be pleased to set aside and appropriately review the Ruling and orders made on 19<sup>th</sup> January 2024. It is the Applicant's case that the Ruling was made in the absence of crucial documents that had not been availed at the time and the omission to do so was inadvertence due to a honest and technical problem that arose at the offices of the Learned Advocates on record for the Applicant.
4. The Land Registrar Nyeri County (the Respondent) is opposed to the application. By his Grounds of Opposition dated 14<sup>th</sup> February 2024, the Respondent opposes the application on the grounds inter alia:
  1. That the application lacks merit and is an abuse of the court process;



2. That it is misleading for the Applicant to state that the Ruling was made in the absence of crucial documents and he thereafter attaches a sale Agreement, Lease, Official Search and gazette notice;
3. That the documents attached with diligence ought to have been adduced in court during the trial. The omission was due to a lack of diligence and thus this court should not allow the Applicant to re-try the matter.
5. I have carefully perused and considered application and the response thereto. I have similarly perused the submissions and authorities placed before me by the Learned Counsels representing the parties herein.
6. By the Notice of Motion before the court, the Applicant urges the court of be pleased to set aside and appropriately review the ruling and the orders made herein on 19<sup>th</sup> January 2024. It is the Applicant's case that the Ruling was made in the absence of crucial documents that had not been availed at the time of making the Ruling. The Applicant avers that the failure to present the said documents was due to inadvertence, and a honest and technical problem that arose at the offices of the Applicant's Advocates on record.
7. The Nyeri County Land registrar (the Respondent) is opposed to the review application. It is the respondent's case that the documents attached to the Applicant's application ought to have been adduced in court with diligence and that the omission was due to lack of diligence on the Applicant's part. The respondent asserts that the Applicant is merely trying to use this present application to re-open the case to correct the mistakes made during the trial and to seal the holes they discovered after the Ruling.
8. 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 the Judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
9. On the other hand, Order 45 Rule 1 (1) of the [Civil Procedure Rules](#), 2010 sets out the grounds for review and 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 of 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.”

10. Arising from the foregoing, it is evident that a decision to review a Judgment or order is allowed on the following grounds where the application is made without delay:-

- a) discovery of a 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 was made;
- b) On account of some mistake or error apparent on the face of the record; and
- c) For any other sufficient reason;

11. In the matter before me, the Applicant pleads for a review of the Ruling delivered herein on 19<sup>th</sup> January 2024 on the grounds that there was an omission of crucial documents in the application presented to the court due to a mistake that occurred in the office of the Advocates on record. At paragraphs 9 to 12 of the Affidavit filed in support, Mr. James N. Nderi, Learned Counsel for the Applicant depones as follows:-

“9. That I was taken aback by the ruling and order of 19/1/2024 when the court pointed glaring omissions in the application and I had to step back to realize that what I presented for filing was not the final and approved draft.

10. That when I went back to my machine, I found the entire application as I had done but what was in our server is what had been presented for filing. Annexed and marked “A” is the entire copy of the final draft of the application together with the affidavit and the annexures that ought to have been presented;

11. That I personally take responsibility for this mishap and regret that I had over trusted my instincts in presenting an incomplete application before court as I seek it to entreat me in accommodating the review; and

12. That there is little or no prejudice likely to be occasioned by the orders sought which cannot be compensated by way of costs.

12. The question that then comes to mind is whether the omission of crucial documents and the filing of a draft, incomplete application falls within the parameters allowed to warrant a review of a decree or order. As was stated in *Otieno Ragot & Company Advocates –vs- National Bank of Kenya Limited* (2020) eKLR:

“Order 45 Rule 1 does not excuse every error or mistake, even if inadvertent. It excuses those mistakes and allows a party to introduce documents which it could not lay its hands on even after the exercise of due diligence. There was no response to the replying affidavit in so far as it accused the respondent of lack of diligence. The discretion of the law to grant an order of review cannot be used to help a party who has shown lack of diligence..... It was quite clear therefore that the respondent having found out why the Judge decided against it went back to the drawing board and fished out evidence that would bolster its case. This was too late in the day as the horse had already bolted from the stable.”

13. In the matter before the court, the documents which are said not to have been filed are a survey map, completion documents, and copies of receipts, a copy of a search certificate and a copy of Kenya Gazette notice. While it is undeniable that those are documents were crucial to the Applicant’s case, their



omission cannot amount to a discovery of a new and important matter of evidence which was not within the knowledge of the Applicant at the time of filing of the application. That omission cannot amount to a mistake or error apparent on the face of the record to warrant a review of the court's Ruling.

14. As was stated by W. Korir J (as he then was) in *Saham Assurance Co. Ltd -vs- Shimoli* (Civil Suit No. 2 of 2018 [2022] KEHC 14372 (KLR):

“The Applicant has not established any ground for re-opening the case. It has not demonstrated any error or mistake on the face of the record. The record here means the court record. There is no mistake on the part of the court to warrant a review of the Judgment....”

15. Indeed while the Applicant emphasizes that the inclusion of the said documents would suffice for the court to review its decision made on 19<sup>th</sup> January 2024 and to arrive at a different finding, it was evident to me from my perusal of the said Ruling that there were other issues including the omission to enjoin the alleged vendor of the suit property to these proceedings that had led to the dismissal of the earlier application.
16. In the premises, I did not find merit in the Motion dated 7<sup>th</sup> February 2024. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20<sup>TH</sup> DAY OF DECEMBER, 2024.**

In the presence of:

No appearance for the Applicant.

No appearance for the Respondent.

Court Assistant: Kendi.

.....

**J. O. OLOLA**

**JUDGE**

