



REPUBLIC OF KENYA



**Njenga v Mwangi & 2 others (Environment & Land Case 111 of 2020)
[2024] KEELC 14100 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14100 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 111 OF 2020**

JG KEMEI, J

DECEMBER 19, 2024

BETWEEN

MARGARET MUTHONI NJENGA PLAINTIFF

AND

PETER GITHINJI MWANGI 1ST DEFENDANT

KIRTISH CHANDULA KARANIA 2ND DEFENDANT

THE DISTRICT LAND REGISTRAR 3RD DEFENDANT

RULING

1. The Plaintiff/Applicant has filed the instant Application dated 26/9/2024 seeking the following orders;
 - a. The court be pleased to order for the review of the Judgment delivered non the 6/6/2024 on the omission of costs of the main suit.
 - b. That subsequent to prayer a) above the court be pleased to order the defendant to bear the costs of the suit.
 - c. Costs of this application be borne by the respondents.
2. The Application is premised on grounds that the Applicant's prayer and award for costs was omitted in the Judgment dated 6/6/2024 and yet the Applicant incurred costs in prosecuting the case and that the omission of the award of costs is prejudicial to the Applicant and it is in the interests of justice that the orders sought herein be granted.
3. The Application is supported by the Affidavit of even date of Margaret Muthoni Njenga, the Applicant. Rehashing the above grounds, she annexed copies of the Judgment dated 6/6/2024 as MM-1 and copy of the Plaint dated 3/11/2020 as MM-2.



4. The Respondents have not opposed the application despite service having been effected upon them and the Court indulging them to file their replies out of time.
5. On the 8/10/24 parties elected to canvass the application by way of written submissions in any event by close of business of the 18/10/2024 however by the time of preparing the ruling none of the parties had complied.
6. The key issue for determination therefore is whether the Application is merited.
7. The Court enjoys powers to amend and or correct a judgment under Section 99 & 100 of the Civil Procedure Act which provide as follows;

“99. Amendment of Judgments, Decrees or Orders

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.

100. General power to amend

The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

8. Additionally, Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules bestow this Court with powers to Review its decisions on grounds; 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. Relevant to this Application is review of the of the Judgment final orders based on error apparent on the face of the record.
9. Indeed, in her Plaint dated 3/11/2020 the Plaintiff prayed for Orders;
 - a. Declaration as the rightful and only owner of the suit property and a perment injunction be issued against the Defendants, their agents, servants and/or representatives from further transferring the suit property and/or developing it.
 - b. The 3rd Defendant be ordered to cancel the title deed in Kirtish Chandunal Karania and be compelled to issue a new one under the Plaintiff's name.
 - c. Costs of this suit and interests thereon.
10. In the Judgment delivered herein on 6/6/2024 the Court found that the Plaintiff's case had succeeded and entered Judgment in the following terms;
 - a. The Plaintiff's case succeeds.
 - b. A declaration be and is hereby made that the Plaintiff is the rightful and only owner of the suit property and a permanent injunction be issued against the Defendants, their agents, servants and/or representatives from further transferring the suit property and/or developing it.



- c. The 3rd Defendant be and is hereby ordered to cancel the Title Deed in Kirtish Chandunal Karania and be compelled to issue a new one under the Plaintiff's name.
- d. The 3rd Defendant is hereby ordered to cancel the entries on the green card namely 6 -12 forthwith.
11. Evidently it emerges that the award of costs was undeniably omitted in the Judgment dated 6/6/2024. In light of the Court's power to correct such omissions as highlighted in the preceding paragraphs and the Court's inherent powers envisaged under Section 3A of the *Civil Procedure Act* to ensure that the ends of justice are met, I find that the Application be allowed in terms of prayers a and b of the Application.
12. Regarding costs of the Application, I am of the view that there having been no objection to the Application, each party bears their own costs.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19TH DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Ndichu HB Mburu Machua for the Plaintiff

1st Defendant – Absent

Ms. Nganga HB Karuiru for 2nd Defendant

3rd Defendant - Absent

Court Assistant – Phyllis

