



**Muthamia v Government (County) Surveyor Urru & 2 others;
Mutwiri (Intended Interested Party) (Environment & Land Petition
E005 of 2023) [2024] KEELC 13871 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13871 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND PETITION E005 OF 2023

CK NZILI, J

DECEMBER 18, 2024

**IN THE MATTER OF THE PROTECTION OF THE RIGHT TO PROPERTY
UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ABUSE OF ADMINISTRATIVE ACTION
CONTRARY TO ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF CONTRAVENTION OF NATIONAL
VALUES AND PRINCIPLES OF GOVERNANCE AS PROVIDED
UNDER ARTICLE 10 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE CONTRAVENTION OF PRINCIPLES OF PUBLIC SERVICE
AS PROVIDED UNDER ARTICLE 232 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF SECTIONS 22 AND 23 OF THE
SURVEY ACT, CAP 299 OF THE LAWS OF KENYA**

AND

IN THE MATTER OF SECTION 15 OF THE LAND REGISTRATION ACT 2012

AND

**IN THE MATTER OF SECTIONS 3 AND 4 OF
THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

BETWEEN

JOSEPH KITHINJI MUTHAMIA PETITIONER



AND

THE GOVERNMENT (COUNTY) SURVEYOR URRU 1ST RESPONDENT

THE LAND REGISTRAR URRU 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

ARPHAXARD KIRIMI MUTWIRI INTENDED INTERESTED PARTY

RULING

1. On 15.11.2024, the intended interested party, as the appellant, filed a notice of appeal dated 14.11.2024. The intended appeal was against the ruling of this court delivered on 13.11.2024, where it dispensed with, inter alia; the joinder of the appellant as an interested party. Subsequently, the intended interested party filed a notice of withdrawal of the notice of appeal dated 18.11.2024. When the matter came up on 4.12.2024, Mr. Kimathi, counsel for the petitioner, objected to the withdrawal of the notice of appeal and stated that the court has no jurisdiction. Mr. Juma, counsel for the 1st – 3rd respondents, insisted that the matter was not yet at the Court of Appeal. The court then reserved this ruling on the issue of jurisdiction.
2. Section 75 of the *Appellate Jurisdiction Act* relates to a notice of appeal. Sub-Section 1 thereof states that any person who desires to appeal to the Court of Appeal shall give notice in writing, which shall be lodged in duplicate with the Registrar of the superior court. The superior court contemplated in this case is the High Court.
3. Section 81 thereof provides that a party who has lodged a notice of appeal may withdraw the notice of appeal by notice in writing to all the parties who had been served. The costs of the withdrawal shall be borne by the party withdrawing the notice of appeal. Section 84 of the Act provides that; a person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.
4. In this case, the applicant has not filed a substantive appeal at the Court of Appeal. Nonetheless, under Section 81 of the Act, a notice of appeal may be withdrawn through a notice in writing sent to all parties or can also be struck out by the appellate court. The mandate to deal with the withdrawal is a reserve of the Court of Appeal. The jurisdiction of this Court terminates at the lodging of the notice of appeal.
5. The applicant contends that there is a notice of withdrawal of the appeal before the Deputy Registrar and that the notice of appeal had not been endorsed in the first instance. A court's jurisdiction stems from *the Constitution* or a statute. A court cannot act without jurisdiction. A determination of whether there is a pending appeal at the Court of Appeal as per the cited provisions does not fall within my mandate. See *Mombasa Water Products Limited vs Nic Bank Limited & 2 others (Civil Application E051 of 2021) [2022] KECA 523 (KLR) (6 May 2022) (Ruling)*.
6. As to the application dated 26.11.2024, the interested party is seeking the court to review, vary, or set aside the its orders of 13.11.2024; reinstate the application dated 13.9.2024; stay of the contempt proceedings, orders of 3.6.2024 and the consent order dated 14.5.2024. The grounds on its face and



- in the supporting affidavit sworn by Arphaxad Kirimi on 26.11.2024 are that he has discovered new evidence that was not within his knowledge, his parcel shall be extinguished, and that he was not a party to the consent order.
7. Similarly, the applicant avers that the petition was filed secretly despite affecting his title deed for LR No. Meru North/Antuamburi/3162 and his sons title LR No. Tigania/Antuamburi/11821; the orders shall replace the two title deeds with LR No. Antuamburi/7021. Further, the Registry Index Map reflects his parcel of land if the parcels are removed from the Registry Index Map before they are heard.
 8. The applicant further avers that he inherited LR. No. 3162 from his father, Dedan Mutwiri, and was subsequently transferred to him, where he has lived for over 40 years with permanent developments. He further avers that he has subdivided his portion to his children as follows: LR. Nos. Tigania/Antuamburi/118161 to Shelmith Kangai; 118211 to Nelson Mbae; 118171 to Edna Makena; 118191 to Elvis Kinoti and 31621 to Stella Kirimi.
 9. Equally, the applicant avers that he would be prejudiced if not enjoined to the petition as opposed to the petitioner if the application is allowed. He marked copies of the title deed to LR Nos. 3162 and 11821; surveyors report; sketch map; land registrar's response; gathering book; a copy of the letter dated 17.9.2014; copies of the title deeds of the subdivision as AKM 1-9.
 10. There are no responses on record from the respondents to this application. Section 80 of the Civil Procedure Act provides that any person who considers himself aggrieved by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred or 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.
 11. Order 45 of the Civil Procedure Rules, which the applicant relies on, 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 from whom 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 the judgment to the court which passed the decree or made the order without unreasonable delay.
 12. In this case, there is already a notice of appeal that the applicant has lodged over the orders he is seeking to review, set aside, or vacate. A court can only exercise, and a party can only seek for review where the order sought to be reviewed has not been appealed against. Once the applicant filed a notice of appeal, he lost the right to come to this Court for review. The upshot is that the application dated 26.11.2014 is struck out with no order as to costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERUVON THIS 18TH DECEMBER, 2024

In presence of

C.A Kananu

Mr. Kimathi for the petitioner



Mr. Juma for the respondent

Mr. Ondieki for the interested party

HON. C K NZILI

JUDGE

