



**In re Solomon Bundi Muthamia (Judicial Review E005 of 2024)
[2024] KEELC 14035 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14035 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW E005 OF 2024
CK NZILI, J
DECEMBER 11, 2024
N THE MATTER OF LAND ADJUDICATION OFFICER MBWAA I
AND
IN THE MATTER OF PARCEL NO. 790/MBWAA 1 ADJUDICATION SECTION
AND
IN THE MATTER OF SOLOMON BUNDI MUTHAMIA
BETWEEN
REPUBLIC APPLICANT
AND
LAND ADJUDICATION OFFICER MBWAA 1 ADJUDICATION
SECTION 1ST RESPONDENT
THE HONORABLE ATTORNEY GENERAL 2ND RESPONDENT
AND
SOLOMON BUNDI MUTHAMIA EXPARTE APPLICANT
AND
NAOMI GATETU MBIRITHI INTERESTED PARTY
NATHAN MUTWIRI MBIRITHI INTERESTED PARTY**

RULING

1. On 9.10.2024 the court delivered its judgment quashing the respondent's decision made on 23.3.2023 regarding parcel No. 790 Mbwaa I Adjudication Section and prohibited of its implementation by



hiving off 2.5 acres of the exparte applicant's land. Now before this court is the interested parties application dated 7.11.2024 for the review and setting aside the judgment and reinstating the decision or its hearing and determination on merits.

2. The grounds are that the interested parties stand to lose their property where they have lived and extensively developed and that substantive justice can only be served by allowing the application.
3. In the supporting affidavit of Naomi Gatetu M'Mbirithi she avers that the judgment did not give specific orders and that the respondents, despite notices, failed to avail themselves in court to give their statements otherwise, they were going to lose their property out of mistakes of the land adjudication officer and the Hon. Attorney General.
4. The exparte applicant opposes the application on the grounds that:
 1. The court is functus officio.
 2. It is defective.
 3. The judgment was express clear, forthright and unambiguous.
 4. They should have filed an appeal.
 5. Judicial review orders cannot be reviewed, set aside or vacated in the absence of clear grounds
5. An interested party is neither a plaintiff nor a defendant. It is a party with a stake in a matter, and participation is critical. An interested party in a matter cannot introduce new issues or prayers for determination apart from those of the principal parties. See Republic vs Francis Muruatetu & another vs Republic (2017) KESC 2 KLR.
6. In this matter the interested party filed a replying affidavit to the main motion dated 3.6.2024, supporting the decisions sought to be quashed and prohibited from implementation. The issues now raised in the current motion as to irreparable loss damage, extensive development and who were the rightful owners after a sale were raised in paragraphs 5-20 of the replying affidavit by the interested parties.
7. At the hearing, the interested parties were duly represented by a legal team. The respondent were given adequate time to oppose the motion and attend court. They opted to stay away. The interested parties never complained about the non-participation of the respondents in the proceedings.
8. The court rendered itself on the merits of the matter and rendered a judgment that has not been appealed against.
9. The court became functus officio on the issues raised by the parties and gave the reliefs that had been sought. For a party to be entitled to review and or set aside the applications must be filed without unreasonable delay errors apparent on the face of the record must be demonstrated new and other material that had not been available with use of due diligence and must be shown and or for any other sufficient reason must be clearly indicated. In the application before the court, the applicant says that the judgment gave no specific orders. That cannot be true. Parties are bound by their pleadings and issues for court determination arise from the pleadings. A court of law cannot give reliefs or determine issues that have not raised or prayed for by the parties. What the court had been asked to do was to find the process and outcome of the A/R objection proceedings unconstitutional and proceed to vacate and prohibit its implementation.
10. The interested parties had no specific and independent claim against the respondents and the exparte applicant.



11. The interested parties had no specific reliefs that they had sought. The law allows for a matter to proceed and substantive orders to be issued in the absence of a party in the matter, so long as there is adequate service of summons and hearing notices.
12. A party may opt out of the proceedings. A court cannot compel a party to participate in the proceedings. The interested parties have not stated what material they had relied upon which was not considered by the court or which was in the possession of the respondents and was not availed and could have enabled the court to reach a different verdict.
13. The reliefs sought and granted by the court were in line with the law as set out in *Pastoli vs Kabale District Local Government Council and others* (2008) 2 E.A 300.
14. The upshot is I find the application lacking merits. It is dismissed with costs. File closed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 11TH DECEMBER, 2024

In presence of

C.A Kananu

Mr. Muriuki for the exparte applicant

Juma for the Attorney General

HON. C K NZILI

JUDGE

