



**Kirima alias John Gerison & another v Kirima & another (Environment & Land Case 1257 of 2014) [2024] KEELC 13823 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13823 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1257 OF 2014  
AA OMOLLO, J  
DECEMBER 9, 2024**

**BETWEEN**

**WANJAU KIRIMA ALIAS JOHN GERISON ..... APPLICANT**

**AND**

**JOHN OTIENO OBADO & 299 OTHERS ..... PLAINTIFF**

**AND**

**TERESIA WAIRIMU KIRIMA ..... 1<sup>ST</sup> RESPONDENT**

**ANNE WANGARI KIRIMA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application is Notice of Motion dated 16<sup>th</sup> November, 2023 called Wanjau Kirima aka Gerishon Kirima moved the court seeking to granted the following orders:
  - a. Spent
  - b. That the Applicant be joined as intended defendant in this suit as consolidated.
  - c. Spent
  - d. That execution of the judgment of 23<sup>rd</sup> October, 2023 is hereby stayed pending hearing and determination of this suit.
  - e. That the execution of judgment of 23<sup>rd</sup> October, 2023 is hereby stayed pending partial or final distribution and transmission of the suit property herein under Milimini High Court Succession Cause No. 1298 of 2011 in the matter of the Estate of the late Gerishon Kamau Kirima (deceased)



- f. That this Honourable court be pleased to order a review of Judgment of this Honourable court dated 23<sup>rd</sup> October, 2023 to the extent of acknowledging the interest and proprietary rights Wanjau Kirima Alias John Gerishon Kirima in the suit property being a co-owner of the suit properties with Gerishon Kirima (deceased).
  - g. That in the alternative this Honourable court be pleased to re-open hearing of the matter to enable the participation and representation of WANJAU KIRIMA alias JOHN GERISHON KIRIMA regarding his proprietary right and interests in the suit property.
  - h. Any such other Orders/Directions that this Honourable court may deem fit to grant.
2. The application is premised on the grounds inter alia;
    - a. That the decision-making process was flawed following suppression of facts and or nondisclosure of material facts by the administrator of the Estate of Gerishon Kamau Kirima in the following manner;
      1. . The Administrators did not inform the court that the Applicant has laid a claim over the suit properties, which has been recognized by the orders of the 30<sup>th</sup> October, 2013 P&A SC 1298 of 2011 – in the Estate of G. K. Kirima.
      2. . The Administrators did not inform the court that the orders of 30<sup>th</sup> October, 2013 distributed the suit property among the beneficiaries taking to account the Applicant’s claim.
      3. . The Administrators did not inform the court that they have both admitted in P & A SC 1298 of 2011 that the Applicant is one and the same person as John Gerishon Kirima a fact while established among the Kirima family.
      4. . The Administrators did not inform the court that L.R. No. 5908/8 is held between G. K. Kirima and I within the ambit of partnership law.
    - b. That this application has the effect of reopening hearing of the matter for the reasons that it ramifications affect the hearing and finding in the proceedings of P & A SC 1298 of 2011.
  3. In the supporting affidavit, the Applicant deposes that the judgment delivered by Okong’o J. on 23<sup>rd</sup> October, 2023 with regard to the name John Gerishon Kirima was based on misrepresentation and or suppression of facts by the administrators of the estate of G. K. Kirima. He added that one of the issues in dispute in P & A Cause No. 1298 of 2011 pertains to who the name John Gerishon Kirima belongs to hence the holding in the impugned judgment interferes with the hearing in the succession cause. He urged the court to grant the orders sought.
  4. The application is opposed by the Respondents. Mr. Paul Kioi in his replying affidavit sworn on 5<sup>th</sup> February, 2024 stated that the applicant is a Johnie come lately thus does not deserve the orders of review. That the Application for review cannot be determined while there are pending appeals before the Court of Appeal. That the Applicant should file an appeal if he is aggrieved by the judgment rendered.
  5. Anne Wangari Kirima vide grounds of opposition dated 6<sup>th</sup> February, 2024 pleaded that this court lacks jurisdiction to vary or set aside a portion of the judgment delivered by a court of concurrent jurisdiction. She avers that the Applicant is guilty of laches and he has failed to meet the threshold set for granting of orders of review.



6. In his submissions dated 20<sup>th</sup> September, 2024 in support of his application, the Applicant cited inter alia the provisions of articles 22, 24 and 40 of *the Constitution*. He also reproduced the provision of Order 45 of the Civil Procedure Rules. He stated that the claim on the personhood of John Gerishon Kirima had not crystallised in the succession cause to enable him participating in proceedings in the said name. Hence it was agreed that the administrators of G.K. Kirima’s estate would act on behalf of the estate and this placed a duty on the said administrators to disclose to the court all material facts pertinent to the suit. Unfortunately, he avers they (administrators) did not fulfil this duty with the result that the court arrived at un-informed decision that “there is no evidence before the court that such a person lodged a claim in the succession cause relating to the estate of G. K. Kirima challenging the estate to claim the said properties absolutely.”

**Analysis and Determination:**

7. Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules sets the threshold for reviewing a decree/judgment. Order 45 (1) provides thus;  
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 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.
8. The duty of this court is to ascertain whether the application meet the threshold for reviewing the decree/judgement. One of the grounds used to oppose the application is that there is a pending appeal hence the matter is this court cannot handle the application for review. In answer, I cite the provisions of order 45(2) which states that, “A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”
9. The other reason stated is that I cannot review a judgement reached by a court of concurrent jurisdiction. However, I inherited the docket/files handled by Okongo J so I am handling the matter just as if were Okongo J sitting. Lastly, on the question of delay, the application was filed soon after the judgement was rendered so there is no inordinate delay. Now on the merits of the grounds presented in support of the application, the Applicant argues that the decision is likely to interfere with the hearing and finding of the high court on the succession matter. The issue of personhood of John G. Kirima was not pleaded and so was not in contest in the present case.
10. Further, this court’s decision cannot bind the High Court on questions of fact or law. Whether there was an arrangement between the Applicant and the Defendants on what evidence they were to present was a matter out of the Court’s purview. In any event, this court is not clothed with jurisdiction to handle any disputes as between beneficiaries of a deceased estate. It is also my considered view that the Applicant is asking the court to review the merit decision under the guise of relying on the heading of discovering of important evidence.



11. Without prejudice to the above, has the Applicant shown he has new and important evidence? The Applicant annexed a copy of the Judgment and some orders issued in Succession Cause No. 1298 of 2011 which I do not find their relevance to the application. The Applicant also deposed that they had consented on his share in the suit property. He does not explain that these minutes were not within his reach when the case was going on. Neither does he justify why he did not ensure the minutes were filed by the Administrators in the case as part of the defence evidence. The Applicant was aware of this case and even the agreement that the administrators were legally representing the estate. Order 45 anticipates evidence that could not easily be accessed by the party moving the court for review.
12. I have analysed the document, on its face it did not say the applicant was a part owner. No property number is cited in the said minutes. At minute 2 headed “thief of Kirima & Sons materials and rental money from properties “ it said ...illegally collects all the Embakasi Rent which had not been agreed to by Kirima and sons or any of the partners or the property owners namely John Waweru Gerishon Kimima and Geshon Kamau Kirima.
13. I am not persuaded that the Applicant has demonstrated good ground to warrant reviewing and or setting aside the judgement to create room for re-litigating the dispute. The application is thus dismissed with costs to parties who responded to the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> OF DECEMBER, 2024 BY EMAIL TO PARTIES AND UPLOADING ON THE CTS.**

**A. OMOLLO**

**JUDGE**

