



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Muigai v Mbutia (Civil Suit E001 of 2023)
[2025] KEHC 8938 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 8938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL SUIT E001 OF 2023
AN ONGERI, J
JANUARY 24, 2025**

BETWEEN

MARY NYAMBURA MUIGAI APPLICANT

AND

DANIEL KURIA MBUTHIA RESPONDENT

RULING

1. The application coming for consideration in this ruling is the one dated 25/10/2024 by Daniel Kuria Mbutia (Respondent/ Applicant) brought under Section 80 of the [Civil Procedure Act](#) and Order 45 and 51 of the Civil Procedure Rules.
2. The Respondent/Applicant is seeking the following orders:-
 - i. This application be certified as urgent and be heard as soon as possible.
 - ii. Pending the hearing and determination of this Application there be a stay of execution of the Judgement delivered on 14th October, 2024 by Hon. Justice George Dulu.
 - iii. Pending the hearing and determination of this Application the Honorable Court do issue an order restraining the Applicant/Respondent from interfering with the Respondent/Applicant tenants and from demanding rent from them.
 - iv. Pending the hearing and determination of this Application the Honorable Court do conduct a site visit to the land Known as L.R N0.1956/2974 located at Voi town to ascertain the current situation.
 - v. The judgement delivered by Hon. Justice George Dulu be Reviewed at Paragraph 77(a) in regards to the distribution of the land known as L.R N0.1956/2974 located at Voi town.



- vi. The Honorable Court do issues orders that the 3rd parties to be allowed to take up their portions in the land known as L.R No.1956/2974.
 - vii. The Honorable Court do issue orders restraining the Applicant/Respondent and her lover from threatening/intimidating the Respondent/Applicant and from interfering with his business.
 - viii. Cost of this application be provided for.
3. The application is premised on the following grounds;
- i. That judgement in this matter was delivered on 14th October, 2024 by Hon. Justice George Dulu.
 - ii. That however, the distribution in the said judgement is not a true reflection of the current situation and the Respondent/Applicant wishes Paragraphs 77 (a) reviewed.
 - iii. That at paragraph 77 (a) of the judgement, Land Parcel L.R No.1956/2974 is subdivided into 2 and the Applicant/Respondent is allocated the side that has a car wash
 - iv. That the said car wash does not exist and has been none existent for a long time now that currently the Respondent/Applicant has put up 5 shops that he rents out to his tenants this was the position when the Suit was filed.
 - v. That the said parcel of land had already been subdivided into 5 pieces of land and the 3 of the pieces had already been disposed of to 3rd parties.
 - vi. That the said orders are highly prejudicial to the Respondent/Applicant who will unfairly have his livelihood taken away by the Applicant/Respondent on the basis of the distribution.
 - vii. That there are sufficient grounds for the court to review its earlier orders as prayed.
 - viii. That it is only fair in the interests of justice the application herein be heard and the orders herein granted.
 - ix. That the application has been brought in good faith and without undue delay.
4. The application is supported by the affidavit of the Respondent/Applicant in which he deposed as follows;
- i. That I am the Respondent/Applicant in this matter with the knowledge of the facts hence competent to swear this Affidavit.
 - ii. That I swear this affidavit in support of my Application for Review of the judgement issued on 14th October, 2024 by Hon. Justice George Dulu.
 - iii. That the said judgement under paragraph 77(a) distributed land LR Number 1956/2974-Voi Town will be and is hereby divided equally between the applicant and the respondent. The portion of the applicant will include the carwash business premises or part of it, if those car wash premises extend to more than half of the plot.
 - iv. That upon the delivery of the Judgment on the 14th of October the Applicant/Respondent and her lover went to the subject property and began to harass the tenants who have rented shops from me.



- v. That when my tenants told me what was going on, I immediately went there and I was chased away by the Applicant/Respondent who told that I no longer own anything there and I should not be seen there henceforth.
- vi. That Applicant/Respondent then proceeded to remove the sign I had placed in one of the shop inviting people to rent and replaced it with her own. She was eagerly waiting to take away my livelihood and to continue to humiliate me.
- vii. That the Applicant/Respondent went ahead and began to demand that my tenants pay her rent.
- viii. That further, the Applicant/Respondent and her lover went ahead and began to harass my good friend Mr. Shaki who has rented out some space behind my shop to park his lorries and told him to remove those lorries since that areas belongs to her. My friend had already paid me rent for the month of October and was very frustrated.
- ix. That I worked very hard and borrowed money when I was completely broke to build those shops and it quite unjust that I be denied the opportunity to enjoy the fruits of my labour. This situation has greatly affected my health.
- x. That I have been advised by my advocate on record in whose advice I rely on that Article 40 of *the Constitution* protects me as the rightful owner to enjoy the proceeded from my property. The Applicant/Respondent should not enjoy properties that she did not help build.
- xi. That I believe that when the learned Judge made the judgement he was not aware that the car wash business was not operational and has not been operational for some time now, that currently I have five shops in the property while the Applicant/Respondent only has one shop that has been built at the tail end of the property.
- xii. That it was a very big surprise to me because I understood that the subject property was yet to be distributed upon the issuance of a decree and that we were going to seat down and distribute it equally the portions that are available for distribution.
- xiii. That in the evidenced provided before this court by the Applicant/Respondent marked as "M2" Letters making applications for various approvals and services the Applicant/Respondent provided evidence to prove that the land has already been subdivided into Five parcels of land and as such it cannot be divided into two equal parts as the court suggested. (Annexed hereto and marked as 'DKM-5' is a copy of the Applicant/Respondent evidence)
- xiv. That indeed that is the position the said property was subdivided in the year 2017 and the process stalled due to lack of funds but I have recently received word that the process is almost done. (Annexed hereto and marked as 'DKM-6' are copies of the subdivision approval letters, land rates payments and plans.)
- xv. That the major reason that I was sub-dividing the subject parcel of land was because three parcels had already been disposed of to third parties.
- xvi. That in 2020 the Applicant/Respondent and I gifted part A the subject property to Bishop, we entered into an agreement that stated that if I do not give him the piece of land I have to pay him the market price of the said parcel of land. I entered into the said agreement with the full blessings of the Applicant/Respondent as she is the one who told me to do so. I believe the said portion cannot be shared between us. (Annexed hereto and marked as 'DKM-7' is the agreement)



- xvii. That the Plaintiff/Applicant was fully aware that the major reason I was sub dividing the land was because we did not have money and we were deep in debt and I had to sell part D and E.
- xviii. That during that period I had to borrow money to support our family and I was deep in debt I borrowed money from Susan to see if I could recover from the bad business deal I had entered to and because I could not pay her back I entered into a sale agreement with her.
- xix. That was the major reason I was evicting the Applicant/Respondent when she was encroaching into the land because the land does not belong to me. (Annexed hereto and marked as 'DKM-8' is a copy of the sale agreement and proof of payment.)
- xx. That I never entertained the Applicant/Respondent behavior of encroaching in the said land and that's why I sent her a demand letter warning her to keep off. (Annexed hereto and marked as 'DKM-9' is a copy of the demand letter.)
- xxi. That I used the money that I received from the sale in providing for my family. I have always paid school fees and school related expense for my five children , I provide food and clothing (Annexed hereto and marked as 'DKM-10' are my financial Mpesa statement proof of payment.)
- xxii. That I paid the rent arrears that we had accrued at the rented house that we used to live in to Mr. Wahome, the house that I was chased away from by the Applicant/Respondent. (Annexed hereto and marked as 'DKM-11' are proof of payment.)
- xxiii. That it is untrue that the Applicant/Respondent put up electricity in the said property she had tried to put up illegal connections but I went ahead and denied her to that and Kenya power rejected her application. (Annexed hereto and marked as 'DKM-11' is proof of the rejected electricity registration)
- xxiv. That I believe that the Applicant/Respondent only misrepresented facts before the court and even presented fake receipts in a well calculated move to ensure that I don't enjoy the properties I worked so hard to acquire. She is gaining unfairly.
- xxv. That the current situation will make it difficult for the parties to execute the said judgement as the car wash does not exist and the parties cannot share land that does not belong to them.
- xxvi. That I filled a divorce petition because of the mistreatment I received from the Applicant/ Respondent and I would hate to imagine that even after divorcing her she still will continue to follow me and humiliating me in front of my children family and friends, she is currently living with another man in the parcel of land and my children have been subjected to witnessing this something that is not within our culture.
- xxvii. That I fear for my children's future and I intend to build a house for my children in my half of the portion left to me to ensure that they always have a place to call home.
- xxviii. That the said orders are highly prejudicial to the applicants who will unfairly have me face great financial burdens through no fault of my own.
- xxix. That I believe that there are sufficient grounds for the court to review its earlier orders as prayed.
- xxx. That it is only fair in the interests of justice the application herein be heard and the orders herein granted.
- xxxi. That the application has been brought in good faith and without undue delay.



5. The Applicant/Respondent opposed the application by filing a replying affidavit sworn on 11/11/2024 as follows;
 1. That I am the Applicant in the originating summons filed in this matter and thus duly authorized to swear this affidavit in response to the Respondent's application for review and stay of execution dated 25th October 2024.
 2. That I have read and understood the contents of the said application and the supporting affidavit by the Respondent, Mr. Daniel Kuria Mbuthia, and respond to each ground as follows.
 3. That on 14th October 2024, Hon. Justice George Dulu rendered a judgment that ordered an equal division of LR Number 1956/2974 in Voi Town, awarding me a portion of the property that includes the car wash premises, or an equivalent portion. I lawfully assumed management of my designated share based on this judgment.
 4. That I am advised by my advocates on record that under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules, a review may only be granted upon the discovery of new and important evidence that was not available to the Applicant during the hearing, or if there is a mistake or error apparent on the record. The Respondent's application fails to meet these criteria, as it introduces no new or compelling evidence and merely reiterates points that were either raised or could have been raised during the hearing. The application, therefore, lacks merit and is a misuse of the court's time.
 5. That I respond to the specific grounds raised by the Respondent as follows:

Paragraph 4 of the Respondent's Affidavit: Alleged Tenant Harassment: This is categorically false. I took over my allocated portion as per the judgment and only communicated with tenants to inform them of the lawful change in rent collection. At no point have I harassed any tenant.

Paragraph 5: Vacant Shop and Instructions to Leave: I instructed the Respondent to vacate my allocated portion in accordance with the judgment. The shop in question lies within my designated area, and I am subdividing it to attract tenants in line with my lawful rights.

Paragraph 6: Letters to Tenants: I Lawfully issued letters to all tenants on 15th October 2024, directing them to remit rent payments to me, as provided by the court's judgment.

Paragraph 7: Mr. Shake's Trailers: I requested Mr. Shake's son, Jeremiah, to tow the trailers obstructing the car wash area, as they encroached on my portion of the property.

Paragraph 9: Financing and Construction of Shops: The Respondent's claim of borrowing funds to build the shops is untrue. I provided evidence to the court demonstrating that I personally financed and constructed the shops. This is corroborated by the Respondent's own prior demand letter, which acknowledged that I constructed the shops.

Paragraph 10: Ownership of Portion with Shops: As confirmed in the judgment, I am the rightful owner of the portion containing the shops, thus entitled to manage this area.

Paragraph 11: Car Wash Operation and Tenancy Agreements: The car wash is operational, and I filed all relevant tenancy agreements in court, evidencing that I developed and managed the premises.

Paragraph 12: Equitable Division and 50/50 Split: The court's judgment ordered an equitable division of the property into two equal portions, a directive that I am lawfully enforcing. Any assertion that some portions are unavailable for division was never raised during the hearing and is therefore an afterthought intended to undermine the court's ruling.

Paragraph 13: Subdivision Plan: The plan referenced by the Respondent was merely a proposal for future development, not a legally binding subdivision. The property remains divisible into two portions as ordered by the court.

Paragraph 14: 2017 Subdivision Claim: I am unaware of any valid subdivision from 2017. On the date of judgment,



I was informed by my previous advocate that the Respondent's counsel had a prospective buyer for the property. This contradicts the Respondent's claims of existing subdivisions and reveals an ulterior motive. Paragraph 15: Third-Party Interests: This issue was never disclosed during the original hearing and is being raised in bad faith. Any alleged transactions involving portions of the property granted to me are invalid as I did not give consent, as required for matrimonial property. Paragraph 16: Gift to Bishop Kamau: The family rejected this proposal. Any agreement with Bishop Kamau falls under the Respondent's allocated portion. Paragraph 17: Sale of Portions D and E: The Respondent had previously sworn never to sell any part of this property, calling into question his claims of a sale. Furthermore, the alleged sale was not presented during the trial, rendering it void for lack of my consent as required for matrimonial property. Paragraph 18: Transaction with Susan: This claim was not presented in court and appears fabricated. The Respondent previously issued a demand letter in 2023 asserting exclusive ownership, without any mention of Susan. Paragraph 20: School Fees and Financial Support: While the Respondent contributed to school fees, he has not met other expenses, including adequate clothing for the children, and his claims of financial support are exaggerated. Paragraph 22: Electricity Supply to Plot: I secured a legitimate electricity supply through ACK Church and later through KPLC. The Respondent's claim of "illegal connections" is misleading and inaccurate. Paragraph 23: Construction Receipts: The Respondent never contested the receipts I provided in court, nor did he present any evidence of personal expenditures on the property. The court recognized my significant contribution to the property's development. Paragraph 24: Operational Car Wash: The car wash has always been operational, and the entire property is intact. Any attempt to claim otherwise is a ploy to undermine the court's fair distribution. Paragraph 25: Custody of Children and Access to Property: The Respondent has his own residence and should respect my right to manage my portion without interference. He is welcome to pursue any concerns about the children's upbringing through lawful custody channels. Paragraph 26: Pipe Dream of Constructing Family House: The Respondent's intent to build a family house is contradicted by his actions over the last 25 years, as he did not build or maintain a home for the family.

6. That the Respondent's application for review fails to introduce any new or compelling evidence, relying instead on unsubstantiated claims and afterthoughts intended to frustrate the execution of a valid court judgment.
 7. That the Respondent's claims are contradictory, lacking in merit, and should be dismissed as an abuse of court process. Allowing this application would undermine the authority of the court and delay justice.
 8. That I respectfully pray for the following orders: The Respondent's application for review be dismissed in its entirety with costs. The court affirms my right to manage and collect rent from tenants within my allocated portion, as per the judgment. The court issues any further orders it deems fit to protect my lawful rights under the judgment.
6. The parties filed written submissions in the application as follows; the applicant herein submitted that the respondent provided to the court documents to show that subdivision of the subject land had been undertaken. The applicant on the other hand provided documents such as agreements to show that the subject land was subdivided into five portions. Out of the five portions, three parts had been sold and gifted to third parties. It was also in the court's record that the car wash included in its judgement had not been operational and the only issue for consideration was on the issue of the six shops forming part of the parcels remaining under the possession of the applicant.



7. The applicant argued that the court failed to take into consideration the documents provided. The respondent thus interpreted the judgement to mean that she was granted the shops that the applicant built. She has since taken over and is denying the applicant his source of income. The applicant consequently no longer has the ability to support his livelihood and children as the shops were his source of income.
8. The applicant contended that this court has jurisdiction to hear and make a determination on the application herein on the basis of an apparent mistake on the face of the record. The court's mistake was based on the facts of the case and the evidence adduced in court.
9. The sole issue for determination in this ruling is whether paragraph 77(a) of the judgment delivered on 14/10/2024 should be reviewed.
10. I have considered the submissions by both parties on the said issue. The following are grounds of review of a judgment.
 - (a) The discovery of new and important matter or evidence;
 - (b) An error apparent on the face of the record; or
 - (c) For any other sufficient reason.
11. I have also gone through the entire judgment of my predecessor to figure out how the court intended the said property to be distributed.
12. The said paragraph states as follows;

“77(a) LR Number 1956/2974 Voi Town will be and is hereby divided equally between the Applicant and the Respondent. The portion of the Applicant will include the car wash business premises, or part of it, If those car wash premises extend to more than half of the plot.”
13. The Judge did not mention shops or rental premises or 3rd party interests. If there were 3rd parties involved, they ought to have been enjoined to protect their interest.
14. The judgment stated at paragraph 77 (a) that the Land Parcel L.R No.1956/2974 is subdivided into 2 and the Applicant/Respondent is allocated the side that has a car wash.
15. There was no evidence to the effect that the said parcel of land had already been subdivided into 5 pieces of land or that the pieces had already been disposed of to 3rd parties.
16. The judgment talked of squatters at the Land Parcel L.R No.1956/2974 at paragraph 67.
17. The judgment stated that the Applicant/Respondent in this case is entitled half of the said property which should include the car wash premises .
18. I find that there is NO basis for review of the order issued by this court in the judgment dated 14/10/2024.
19. I dismiss the application and direct that the LR Number 1956/2974 Voi Town will be divided equally between the Applicant and the Respondent as per the judgment dated 14th October, 2024.
20. If the Applicant/Respondent is not satisfied with the judgment he should appeal to the court of appeal.
21. Each party to bear its own costs of this application.



DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT VOI 24TH DAY OF JANUARY, 2025.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

