



**Republic v Chief Land Registrar, Kajiado; Bachu (Exparte Applicant)
 (Environment and Land Judicial Review Miscellaneous Application
 44 of 2018) [2023] KEELC 928 (KLR) (20 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 928 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

**ENVIRONMENT AND LAND JUDICIAL REVIEW
 MISCELLANEOUS APPLICATION 44 OF 2018**

MN GICHERU, J

FEBRUARY 20, 2023

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
 JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

**IN THE MATTER OF AN APPLICATION BY FIROZE AMINO BACHU FOR
 JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITIONAND**

IN THE MATTER OF LANDS REGISTRATION ACT, 2010

AND

**IN THE MATTER OF A DECISION BY THE CHIEF LAND REGISTRAR,
 KAJIADO DATED 23RD MAY, 2018 IN RESPECT OF BOUNDARY
 DISPUTE KAJIADO/KITENGELA/6579(31372)-VERSUS-KAJIADO/
 KITENGELA/29753, KAJIADO/KITENGELA/29764, KAJIADO/
 KITENGELA/29752, KAJIADO/KITENGELA29761, KAJIADO/KITENGELA/29760**

**IN THE MATTER OF LAND REGISTRATION ACT, 2012IN THE MATTER
 OF ARTICLES 10, 40, 47, 60 OF CONSTITUTION OF KENYA, 2010**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF LAND REGISTRAR, KAJIADO RESPONDENT

AND

FIROZE AMIMO BACHU EXPARTE APPLICANT



RULING

1. This ruling is on the notice of motion dated 30/6/2022. It is by the Ex Parte applicant, Firoze Amimo Bachu, and it is brought under article 50 of *the Constitution* of Kenya, section 3A of the *Civil Procedure Act*, orders 50, rules 1 and 12, 45, rule 1 *Civil Procedure Rules* and other enabling provisions of the law.
2. The motion seeks one main prayer namely;
 - (i) Review and setting aside of the ruling dated 17/5/2022. other prayers are as follows.
 - (ii) The court gives directions on the hearing and determination of the applicant's application dated 6/5/2021.
 - (iii) The prayers for stay of execution of the decree and stay of taxation of bill of costs dated 8/6/2022 were allowed on an interim basis on 13/10/2022.
3. The motion is supported by twelve grounds, a twelve paragraph affidavit dated 30/6/2022 and four annexures. The gist of the above material is that the ruling of 17/5/2022 which dismissed the application dated 20/7/2018 with costs was made in error and it should have been on the notice of motion dated May 6, 2021.

Secondly, the interested parties seek to demolish the development on the land and they should be stopped through an order of this court.

Thirdly, the interested parties who were awarded costs have filed a bill of costs for taxation.

Finally, the manifest error can only be remedied through review.
4. The notice of motion is unopposed because the respondents did not file any replying affidavit or grounds of opposition. No submissions were filed by the applicants before the timeline of 20/12/2022 or even later and as I write this ruling in mid February 2023, no submissions have been filed.
5. I have carefully considered the motion in its entirety and I find that the following issues arise.
 - (i) Is there any material difference application dated 20/7/2018 and the one dated 6/5/2021?
 - (ii) Is there any appeal preferred against the ruling dated 17/5/2022?
 - (iii) Can an order of review be made in a case where an appeal has been preferred?
6. On the first issue, I find that there is no difference between the chamber summons dated 20/7/2018 and the notice of motion dated 6/5/2021. They are one and the same. One is a replica of the other. The only difference is the heading. While the one dated 20/7/2008 is headed as Ex Parte –Chamber Summons, the other one is headed Notice of Motion application.

The number of prayers, the deponent and the content of the affidavits and the annexures thereto are all the same.
7. On the second issue, I find that a notice of appeal was filed on 6th June, 2022. The said notice is dated May 23, 2022. It was signed by the Deputy Registrar on 7/6/2022.
8. On the third issue, I find that by virtue of order 45, rule 1(a) *Civil Procedure Rules*, once a party prefers an appeal, the door for review is closed on that party. In other words, review and appeal in the same matter are mutually exclusive. A party can only have one but not both. The rule provides as follows. 1(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...may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay”.

In this case, review is not available to the Ex Parte applicant because he has taken the appeal route.

When I wrote the ruling dated 17/5/2022, the Notice of Motion dated 6/5/2021 was not on record. I only saw it after it was filed as an annexure to the current application. The annexed copy has no court stamp to show that it was ever filed. Even if I had seen it, I would have arrived at the same conclusion that I did on 17/5/2022.

For the above stated reasons, I find no merit in the Notice of Motion dated 30/6/2022 and I dismiss in its entirety with costs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

