



Kamau & another v Kiarie & 4 others (3rd, 4th and 5th Defendants sued as the Trustees of PCEA Thindigua Church); Chief Land Registrar, Nairobi & 6 others (Interested Parties) (Environment & Land Case 93 of 2015) [2023] KEELC 903 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEELC 903 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 93 OF 2015
J OMANGE, J
FEBRUARY 16, 2023

BETWEEN

PETER THUO KAMAU 1ST PLAINTIFF

GRACE MUTHONI THUO 2ND PLAINTIFF

AND

LUCY WAMAITHA KIARIE 1ST DEFENDANT

SAMUEL KIARIE 2ND DEFENDANT

FAITH MUTHONI CHURU 3RD DEFENDANT

JOSEPH NDUNGU NJOROGE 4TH DEFENDANT

LUCY WAMBUI WAWERU 5TH DEFENDANT

3RD, 4TH AND 5TH DEFENDANTS SUED AS THE TRUSTEES OF PCEA THINDIGUA CHURCH

AND

CHIEF LAND REGISTRAR, NAIROBI INTERESTED PARTY

JAMES NJENGA THUO INTERESTED PARTY

MARGARET WAMBUI THUO INTERESTED PARTY

LEAH WANJIKU THUO INTERESTED PARTY

TITUS KAMAU THUO INTERESTED PARTY

EUNICE NDUATA THUO INTERESTED PARTY

JOSEPH KARIUKI THUO INTERESTED PARTY



RULING

1. The subject matter of this application is the Land/ Reference Number 76/364 (original number 76/364/32/343).
2. The Plaintiff/ Applicants application dated April 6, 2022 was brought under certificate of urgency and prays for the following reliefs;
 - i. Spent
 - ii. Spent
 - iii. That the orders issued on November 30, 2021 be reviewed and or set aside.
 - iv. That the Eviction Order given on 3rd February, 202 be reviewed and or set aside.
3. The application is brought on the grounds that on the November 30, 2021 gave orders that amounted to an eviction of the intended interested parties without any hearing. The plaintiffs argue that the only orders prayed for on that date were for a hearing date on priority. This notwithstanding, the court gave orders that allowed the application.
4. The plaintiffs contend that thereafter the court gave an eviction order on the February 3, 2022. The application is supported by the affidavit of Grace Muthoni Thuo in which she depones that there is sufficient reason to review the orders of the court.
5. The Defendants filed grounds of opposition urging the court to find that the application is misconceived, frivolous, vexatious and fatally defective hence ought to be dismissed.
6. On the December 15, 2022 the court gave directions that the application be canvassed by way of written submissions. None of the parties filed written submissions. As such the court has not considered any submissions from the parties.
7. The orders that the plaintiffs seek to review were made by the court upon perusing a certificate of urgency dated November 15, 2022. The court allowed the prayer 2, 3 and 4 of the application. This application was pursuant to a Judgement delivered on September 23, 2021 which dismissed the plaintiffs claim for adverse possession.
8. The grounds upon which a court may review its orders are well defined by the law. Order 45 Rule 1 of the *Civil Procedure Rules, 2010* provides as follows: -

“(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 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.”

9. The grounds for the court to exercise this power are; discovery of new and important matters not within the knowledge of the applicant; mistake or error on the face of the record or for any other sufficient cause.
10. The plaintiff contends that there was no prayer for eviction in the Judgement and secondly that the plaintiffs were not heard before the court issued the order on November 30, 2021.
11. I have read the Judgement of the court and note that indeed it is true that the court did not issue an eviction order. However, the Judgement was unequivocal that the subject property belongs to PCEA Thindigua Church. Following this finding the court on application by the Defendants who wanted to enjoy the fruits of the Judgement gave an order for eviction.
12. The plaintiffs allege they were not heard. They have not however established the material they would have brought before the court that would have resulted in a different decision. The onus was on the plaintiffs to prove sufficient cause which would have enabled the court to exercise discretion in their favour. They have not discharged this burden.
13. The upshot of the foregoing is that the application has no merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF FEBRUARY 2023.

JUDY OMANGE

JUDGE

In the presence of: -

No appearance for the Plaintiff

No appearance for the Defendants

Steve - Court Assistant

