



Mwireri Self-Help Group (Through officials namely: David Kimathi, Anita Githinji and Njeri Karari) v District Land Registrar Nairobi (Environment & Land Miscellaneous Case 30 of 2019) [2023] KEELC 845 (KLR) (15 February 2023) (Ruling)

Neutral citation: [2023] KEELC 845 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND MISCELLANEOUS CASE 30 OF 2019
CK NZILI, J
FEBRUARY 15, 2023**

BETWEEN

**MWIRERI SELF-HELP GROUP PLAINTIFF
THROUGH OFFICIALS NAMELY: DAVID KIMATHI, ANITA GITHINJI AND
NJERI KARARI**

AND

DISTRICT LAND REGISTRAR NAIROBI DEFENDANT

RULING

1. Before the court is an application dated October 24, 2022 in which the court is asked to grant leave to the firm of Kinyanjui Kirimi and Co Advocates to come on record for the applicant; review the orders issued on September 3, 2022 and direct that LR No 2890/87 Timau LR No 137215 be registered in the name of Duncan Gathogo Karuri. The application is supported by a joint affidavit of David Kimathi, Anita Githinji and Njeri Karari sworn on the even date.
2. The reasons given are that the applicant is the registered owner of LR No 2890/87 through its said officials; that after purchasing the land on November 21, 1995, the original titles got misplaced. That the court on September 26, 2019 directed the land registrar to trace the documents and transfer the title to the applicant. That on November 28, 2019, the applicant sold the land to Duncan Gathogo Karuri for value. That the applicants are unable to transfer the land since the respondent failed to comply with the court orders. That the applicants are desirous of transferring the title directly to the new owner. That the applicant's members are elderly and sickly hence their inability to strenuously follow up to ensure the transfer of the property. That there will be no prejudice to the respondent if the application is allowed.



3. The application was certified urgent on November 10, 2022 and an order made to serve the respondent. The affidavit of service filed on December 8, 2022 sworn by Walter Motari indicates that service was affected upon the Hon Attorney General's office Meru.
4. When the matter came for interparte's hearing on December 8, 2022, counsel representing the respondent Miss Mwiti stated that she was not opposed to the motion.
5. The power to review, vary or set aside an order or decree is provided under Order 45 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act. The grounds set out therein are on account of an error on the face of the order or decree, the discovery of new and important issues and for some other sufficient reasons. The application must also be brought without unreasonable delay.
6. In this application the applicants are seeking for review of an order or decree which is not attached to the application. There is no evidence that after the application dated May 17, 2019 was allowed, an order or decree was extracted and served upon the respondents for purposes of compliance.
7. The applicants also claim that they are the officials and registered owners of the subject land. No minutes or certificate of registration from the department of social services have been attached or copy of an official search in support of those assertions.
8. The respondent is the District Land Registrar Nairobi. There is no indication if the applicants after 2019 endeavored to or engaged the said office in trying to trace the original transfer documents for the transfer of the land to the applicants.
9. Additionally, the file herein was marked as closed.
10. Order 45 of the Civil Procedure Rules as read together Sections 80 of the Civil Procedure Act bestows upon the court with powers to review, set aside or vary its orders based on new and important evidence which was not available at the time the order or decree was made; based on error apparent on the face of the record and on sufficient cause.
11. What the court is being asked to do so is tantamount to perpetuating an illegality and allowing a party to jump the elementary and procedural requirements under the Land Registration Act. The decree or order issued on September 30, 2019 is more than one year old. In line with Order 22 of the Civil Procedure Rules, a notice to show cause should have been served upon the respondent to show cause why the decree or order has not been executed. Similarly, the party in whose favour the orders are being sought was not a party to the primary application.
12. Without amending, the order or decree to incorporate David Gathogo Karuri to this suit, he remains a stranger to these proceedings. The application does not seek to join Duncan Gathogo Karuri to the decree or order.
13. For the above reasons, I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 15TH DAY OF FEBRUARY, 2023

In presence of:

C/A: Kananu

Mr. Mwenda for respondent

HON. C.K. NZILI

ELC JUDGE

