



**Mwakaba v Kimbio (Environment and Land Appeal E010 of 2024)
[2024] KEELC 13654 (KLR) (Environment and Land) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E010 OF 2024
EK WABWOTO, J
DECEMBER 6, 2024**

BETWEEN

JACTON MWAKABA APPELLANT

AND

MAXWELL MALISO KIMBIO RESPONDENT

RULING

1. This ruling is in respect to the application dated 12th November 2024 seeking the following reliefs: -
 1. Spent...
 2. That this Court be pleased to review its ruling delivered on 27th September 2024.
 3. That this Court be pleased to issue an order directing the Land Registrar to place restrictions on all parcels of land that came out as a result of subdivision of Voi Ndara "A"/ 4389 pending the hearing and determination of this Application and Appeal.
 4. Costs of the application be provided for.
 5. Any other relief that this Court may deem just and fit to grant to meet the ends of justice.
2. The application was supported by the affidavit sworn on 12th November 2024 by Jacton Mwakaba Kimbio the Appellant. It was averred that after the delivery of the ruling on 27th September 2024 he obtained a copy of the green card and upon perusal of the same, it was clear that the Respondent had subdivided the land and new numbers being Voi Ndara "A" 5095, 5096, 5097 and 5098 issued. It was further averred that land parcel no. 5097 is registered in the names of Sicillah Mgoi Mwanjala while 5098 is registered in the names of Charles Guadaru Ndigiri And Anthony Kihagi and that the decision



- of the Respondent in hurriedly subdividing the suit parcel knowing that there was a pending appeal was an act to defeat justice.
3. The Respondent opposed the application vide a Replying Affidavit sworn on 26th November, 2024.
 4. It was deposed that the Applicant had prior knowledge of the information in question and had even sought and was granted leave to adduce the said information prior to the delivery of the ruling by the Court but failed to do so and hence the introduction of the said information at this stage is an afterthought. The Respondent further deposed that the orders sought in the application have been overtaken by events since the parcel Voi NDARA “A”/4389 is no longer in existence and granting the orders sought would amount to condemning other third parties unheard which will be an affront to justice. The Court was urged to dismiss the said application.
 5. The application was canvassed by way of oral submissions made by Counsel for the parties.
 6. During the plenary hearing of the application Learned Counsel Mr. Mwazighe submitted on behalf of the Appellant while Learned Counsel Mr. Motuka submitted on behalf of the Respondent. Both parties relied on the respective affidavits that were on record.
 7. The Court has considered the application, rival affidavits filed and oral submissions made by Counsel on behalf of the parties. The main issues for consideration is whether this court should proceed to review its orders issued on 27th September 2024 also whether this Court should direct the Land Registrar to place restrictions on all parcels that came out as a result of subdivisions of Voi Ndara “A” /4389.
 8. Section 80 of the *Civil Procedure Act* gives the power of review whereas Order 45 Rule 1(b) of the Civil Procedure Code sets out the rules which restricts the grounds for review to the following grounds:
 - a. Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
 - b. On account of some mistake or error apparent on the face of the record; or
 - c. For any other sufficient reason.
 9. Under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously.
 10. In the instant application the Appellant has furnished this court with official searches dated 16th October 2024 in respect to 5098 and 5097 and 5127 which shows that the properties are currently registered in the names of other parties on various dates between August 2024 to September 2024. From the said documents, it is also evident that the Appellant had not obtained the said information as at that time that the Court delivered its ruling on 27th September 2024. This is indeed new and important information which after exercise of due diligence was not within the knowledge of the Appellant as at the time the court made its ruling on 27th September 2024. Should this Court had that information then it would have definitely arrived at a different decision. It is evident that owing to these developments which have now been brought to the attention of the court, there is need to preserve the suit parcel failure of which the Appeal would be rendered nugatory.
 11. The Court also notes that the Respondent’s counsel while objecting to the grant of any status quo orders in this matter on 24th September 2024 had made oral submissions to the effect that there was no subdivision on going in respect to the suit parcel while clearly the same had been initiated. While



there was no stay in existence at that time, the doctrine of lis pendens frowns upon such actions since there was in existence a pending appeal.

12. The Court has also considered the replying affidavit sworn by the Respondent and notes that the Respondent has not indicated any prejudice that he will personally suffer should the orders sought be granted. In respect to the other parties who acquired the said subdivisions, it is worth noting that the said parties ought to have been guided by the doctrine of lis pendens in view of the pending appeal.
13. Consequently, it is the finding of this court that the application meets the threshold for grant of the orders sought and the application dated 12th November 2024 is hereby determined in the following terms;
 - i. The orders issued by this Court on 27th September 2024 are hereby reviewed and set aside in its entirety.
 - ii. An order of inhibition is hereby issued by this Court inhibiting the registration of any dealings on land parcels that were as a result of the subdivisions of Voi Ndara "A"/ 4389 which include land parcels No. 5095, 5096, 5097 and 5098 pending the hearing and determination of this Appeal.
 - iii. Each party to bear own costs of the application.
 - iv. The Appellant is hereby directed to compile, file and serve his record of appeal together with written submissions in respect to the main appeal within 30 days from today.
 - v. Upon service, the Respondent shall equally have 30 days to file and serve his written submissions.
 - vi. Mention on 11th February 2025 for further directions.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DECEMBER, 2024.

E.K. WABWOTO

JUDGE

In the presence of: -

Mr. Mwzighe for the Appellant.

Mr. Motuka for the Respondent.

Court Assistant: Mary Ngoira.

