Kubai (Suing as the Legal Administrator/Representative of the Estate of Gabriel Kubai King'ori) v King'ori & 2 others (Sued as the Legal Administrators/ Representatives of the Estate of Maria Gatitu King'ori) (Environment & Land Case E019 of 2024) [2025] KEELC 3281 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3281 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND CASE E019 OF 2024

JO MBOYA, J

MARCH 20, 2025

BETWEEN

PENINAH KALAYU KUBAI ..... PLAINTIFF

SUING AS THE LEGAL ADMINISTRATOR/REPRESENTATIVE OF THE ESTATE OF GABRIEL KUBAI KING'ORI

AND

DOMINIC NTONGAI KING'ORI ..... 1ST DEFENDANT

MAGDALENE KABUYA KING'ORI ..... 2ND DEFENDANT

ELIZABETH THAIRORA KARIUKI ..... 3RD DEFENDANT

SUED AS THE LEGAL ADMINISTRATORS/REPRESENTATIVES OF THE ESTATE OF MARIA GATITU KING'ORI

RULING

1. The 1st Defendant/Applicant has approached the court vide notice of motion application 14th February 2025 brought pursuant to the provisions of Order 45 and 51 of the Civil Procedure Rules 2010 and Section 80 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya and wherein the Applicant has sought for the following reliefs;

    i. This Honorable Court do certify this application as urgent and it be heard on a priority basis.

    ii. The ruling issued by this Honourable Court on 16th October 2024 in Meru Environment and land Case No. E019 OF 2024 be reviewed and set aside on the ground that there is an error apparent, on the face of the record.

    iii. Costs of this application be provided for.

2. The instant application is premised on the various grounds which have been highlighted at the foot thereof. Furthermore, the application is supported by the affidavit of Dominic Ntongai Kingori [the Applicant herein] sworn on the 14th February 2025 and to which the deponent has annexed diverse documents including a copy of the consent order entered into on the 30th November 2010.

3. Upon being served with the instant application, the Plaintiff/Respondent filed grounds of opposition dated the 5th March 2025 and wherein the Plaintiff/Respondent has contended inter-alia that the application beforehand is not only premature and misconceived but same constitutes an abuse of the due process of the court.

4. Additionally, the Plaintiff/Respondent has also contended that the application has neither met nor satisfied the statutory threshold to warrant the grant of orders of review as envisaged vide the provisions of Order 45 of the Civil Procedure Rules 2010.

5. The 2nd Defendant/Respondent filed a Replying affidavit sworn on the 5th March 2025 and wherein the 2nd Defendant/Respondent has averred that the ruling of the Judge which is sought to be reviewed failed to take into account pertinent issues that were raised by the 2nd Defendant/Respondent. In addition, it has also been contended that the learned judge also disregarded the pleadings that had been filed by the 2nd Defendant/Respondent.

6. The 3rd Defendant/Respondent filed grounds in support of the application, dated the 10th March 2025. The 3rd Defendant/Respondent has posited that the application for review meets and/or satisfies the statutory threshold in terms of the provisions of Order 45 Rule 1 of the Civil Procedure Rules, 2010.

7. Moreover, the 3rd Defendant/Respondent has also posited that other than the error and mistake apparent on the face of record, there is sufficient reason and/or basis to warrant review of the impugned ruling.

8. The instant application came up for hearing on the 12th March 2025 whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of oral submissions. To this end, the Application proceeded for hearing and the submissions rendered on behalf of the parties form part of the record of the court.

9. The Applicant herein adopted the grounds contained at the foot of the application and thereafter reiterated the contents/averments in the body of the supporting affidavit. In addition, the Applicant proceeded to and canvassed two [2] salient issues for consideration and determination by the court.

10. The issues canvassed by the Applicant are namely; that there exists an error and mistake apparent on the face of record; and that the entire suit is barred by the doctrine of res-judicata.

11. Regarding the first issue, namely; whether there exists an error and mistake apparent on the face of record, learned counsel for the Applicant has submitted that the Applicant raised and canvassed inter-alia the issues of res-judicata before the court [differently constituted] but that the court glossed over the issue of res-judicata and thus failed to determine the said question or at all.

12. Additionally, it was submitted that the existence of an error and/or mistake on the face of record does not require elaborate and detailed scrutiny. On the contrary, it was submitted that where an error and mistake is evident and discernible at a glance then the court ought to grant an order of review.

13. In support of the submissions that there exist an error and mistake apparent on the face of record, learned counsel for the Applicant cited and referenced the decision in the case Paul Mwaniki v National Hospital Insurance Fund Board [2020]eKLR.

14. Secondly, learned counsel for the Applicant submitted that the question/issue of ownership of the suit property was dealt with and addressed vide consent of the parties which was entered into and adopted by the court vide Nairobi ELC Case No. 310 of 2010. For good measure, it was submitted that the ownership of the suit property was substantively addressed and same was duly apportioned in the manner captured vide the consent endorsed on the 30th November 2010.

15. Arising from the foregoing, learned counsel for the Applicant has therefore invited the court to find and hold that the issues being raised at the foot of the instant suit and by extension the application which was disposed of by the judge, are res-judicata and thus the impugned ruling ought to be reviewed and set aside.

16. In a nutshell, learned counsel for the Applicant invited the court to find and hold that the application beforehand is meritorious and thus same ought to be allowed.

17. The 2nd Defendant/Respondent adopted the Replying affidavit sworn on the 5th March 2025 and thereafter highlighted two [2] salient issues, namely; that the learned judge completely disregarded the pleadings that were filed on behalf of the 2nd Defendant/Respondent; and that the learned judge also failed to take into account pertinent matters that have been canvassed before him [judge].

18. In the respect of the first issue, learned counsel for the 2nd Defendant/Respondent submitted that the 2nd Defendant/Respondent had filed an elaborate replying affidavit and thereafter annexed various annexures including rulings and proceedings of courts of competent jurisdiction. In particular, it was submitted that the 2nd Defendant exhibited a copy of a consent that was entered into by various parties including Gabriel Kubai Kingori [now deceased] and wherein the ownership of the suit property was addressed.

19. Secondly, learned counsel for the 2nd Defendant/Respondent has also submitted that even though various issues were raised and canvassed before the court [differently constituted], the court failed to take into account all the salient issues and hence the court arrived at an erroneous decision.

20. It was the further submissions by learned counsel for the 2nd Defendant/Respondent that the impugned ruling by the learned judge was wrong in law and therefore same ought to be reviewed.

21. The 3rd Defendant/Respondent filed grounds in support of the application dated the 10th March 2025 and wherein same contended that the application beforehand has met and satisfied the statutory threshold stipulated vide the provisions of Order 45 Rule 1 of the Civil Procedure Rules.

22. Secondly, it was contended that other than the error and/or mistake apparent on the face of record, the impugned ruling also ought to be reviewed and set aside on the basis of sufficient cause. To this end, learned counsel for the 3rd Defendant/Respondent has submitted that the ruling of the court ignored and/or disregarded previous decision[s] of court of competent jurisdiction.

23. Moreover, it was submitted that this court is also clothed with the inherent jurisdiction pursuant to the provisions of Section 3A of the *Civil Procedure Act*. In this regard, learned counsel implored the court to invoke and deploy the provisions of Sections 1A; 1B and 3A of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.

24. Finally, learned counsel for the 3rd Defendant/Respondent has submitted that it would be tantamount to wasting judicial precious time in entertaining and adjudicating upon the subject issue, yet the consent which was entered into and adopted vide ELC N. 310 of 2010 [Nairobi] has not been set aside and/or vacated.

25. Premised on the foregoing, learned counsel for the 3rd Defendant/Respondent implored the court to find and hold that the application by the Applicant is meritorious and thus ought to be allowed.

26. The Plaintiff/Respondent adopted the grounds of opposition dated the 5th March 2025 and thereafter canvassed three [3] salient issues. Firstly, learned counsel for the Plaintiff/Respondent submitted that the issues that are being raised and canvassed by the Applicant herein were duly considered by the court [differently constituted] and thereafter the court rendered a considered decision.

27. Moreover, it has been submitted that the question/issue of res-judicata was substantively dealt with by the judge in terms of paragraph 32 and 33 of the impugned ruling.

28. Secondly, learned counsel for the Plaintiff/Respondent has also submitted that if the Applicant and the rest of the Defendants were aggrieved by and dissatisfied with the ruling of the judge, it behoved the said Applicant and the rest of the Respondents to file an appeal and not otherwise. To this end, it has been submitted that the application for review is thus a disguised invitation to this court to sit on an appeal on the decision of a court of concurrent jurisdiction.

29. Thirdly, learned counsel for the Plaintiff/Respondent has also submitted that the learned judge also considered the ruling that was rendered by the Business premises Rent Tribunal as well as the decision arising from the appeal that was mounted before the Environment and Land Court. Nevertheless, it has been posited that the learned judge was not persuaded that the issues at the foot of the subject matter are res-judicata.

30. Finally, learned counsel for the Plaintiff/Respondent has submitted that the 1st Defendant/Applicant filed and lodged a Notice of Appeal against the ruling of the judge rendered on the 16th October 2024. Furthermore, it was submitted that the notice of appeal has neither been withdrawn nor struck out. To this end, it was contended that the application for review is therefore premature, misconceived and legally untenable.

31. Flowing from the foregoing arguments, learned counsel for the Plaintiff/Respondent has implored the court to find and hold that the application dated the 14th February 2025 is misconceived and thus ought to be dismissed with costs.

32. Having reviewed the application and the responses thereto and upon consideration of the oral submissions ventilated on behalf of the respective parties, I come to the conclusion that the determination of the subject application turns on three [3] salient issues; namely;

    i. Whether filling of the notice of appeal by the 1st Defendant/Applicant preclude same from filing the application for review;

    ii. Whether the Applicant has established and or demonstrated the existence of an error or mistake apparent on the face of record; and

    iii. Whether sufficient cause has been shown to warrant review or otherwise.

33. Regarding the first issue, namely, whether the filing and lodgement of a notice of appeal by the 1st Defendant/Applicant deprives the Applicant of the right to mount/file an application for review, it is imperative to underscore that the application for review can only be ousted where the Applicant has filed an appeal and not otherwise.

34. Additionally, it is worthy to recall and reiterate that a notice of appeal by and of itself does not constitute an appeal per se. However, a notice of appeal is by virtue of the provisions of Order 42 Rules 6[4] of

the Civil Procedure Rules 2010 deemed as an appeal for purposes of addressing an application for stay of execution pending the intended appeal to the court of appeal.

35. Pertinently, the provisions of Order 42 rule 6[4] of the Civil Procedure Rules 2010 only stipulates that the Notice of Appeal is to be "deemed" as an appeal. However, strictly speaking, a notice of appeal does not operate and/or constitute an appeal for purposes of the provisions of Order 45 Rule 1 of the Civil Procedure Rules, which govern and underpin application[s] for review.

36. Given the importance of the provisions of Order 45 Rule 1 of the Civil Procedure Rules, it is imperative that same be reproduced.

37. In this regard, the said provisions are reproduced as hereunder;

> 1. Any person considering himself aggrieved—
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
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> (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.

38. On the other hand, it is also important to reproduce the provisions of Order 42 Rule 6[4] of the Civil Procedure Rules, which relates to the deeming of a notice of appeal as an appeal albeit for purposes of an application under the said order.

39. For ease of appreciation, Order 42 Rule 6[4] of the Civil Procedure Rules are reproduced as hereunder;

> (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
>
> (2) No order for stay of execution shall be made under subrule (1) unless—
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> (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
>
> (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
>
> (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
>
> (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.

40. My reading of the provisions of Order 42 Rule 6[4] of the Civil Procedure Rules drives me to the conclusion that a notice of appeal is only deemed to constitute an appeal to the court of appeal for purposes of the said rule only. To this end, the notice of appeal is only deemed as an appeal to underpin an application for stay of execution pending appeal with the notice of appeal being deemed as an appeal for the limited purposes of anchoring the application.

41. On the other hand, I hold the humble view that the provision of Order 42 Rule 6[4] which deems a notice of appeal as an appeal for the limited purpose of the stated rule, does not apply to the provisions of Order 45 Rule 1[a] of the Civil Procedure Rules which underpin review.

42. Notwithstanding the foregoing, it is important to underscore that the issue beforehand has since attracted a decision by the Court of Appeal and wherein it was held that a notice of appeal does not by and of itself constitute an appeal. In any event, it was also clarified that deeming a notice of appeal as an appeal under Order 42 Rule 6[4] of the Civil Procedure Rules does not make the Notice of Appeal an appeal.

43. In the case of Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 Others [2020] eKLR, the Five [5] judge bench of the Court of Appeal stated and held as hereunder;

> It is the notice of appeal, evincing the aggrieved party's intention to challenge, in this Court the impugned decision, that gives jurisdiction to the courts to entertain applications under Rule 5(2)(b) and Order 42 rule 6(4), respectively. For the purposes of the latter, an appeal to the Court of Appeal is "deemed to have been filed when under the Rules of that Court notice of appeal has been given". This is the only instance, as far as I am concerned, where the notice of appeal is treated as an appeal, yet strictly speaking, the two are distinct. It has been explained before that a notice of appeal will be treated as an appeal only for the very specific and limited purpose of enabling a party who has lost in the superior courts below to seek an order of stay of execution, or of proceedings, or an injunction before this Court.
>
> In colloquial terms, to deem something to be, is to "regard" or "consider" it as the thing though it is not, in fact the thing. It is, as Griffith C.J. called it, a fiction. In the Australian case of Muller V. Dalgety & Co. Ltd, (1909) 9 CLR 693, at p 696, Griffith C.J. expressed as follows the meaning of the term:
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> > The word " deemed " may be used in either sense, but it is more commonly used for the purpose of creating what James L.J. and Lord Cairns L.C. called a "statutory fiction" (see Bill v. East and West India Dock Co.) (1), that is, for the purpose of extending the meaning of some term to a subject matter which it does not properly designate. When used in that sense it becomes very important to consider the purpose for which the statutory fiction is introduced." (Emphasis supplied).
>
> The word "deemed" as used in Order 42 Rule 6(4) clearly conveys the construction that it is not an appeal, strictly speaking.
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> Order 42 Rule 6(2) can be said to be in the category of what are commonly termed 'deeming provisions'. It only deems a notice of appeal as "an appeal".
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> The term "deem" was defined by this Court in Telkom Kenya Ltd vs. Jeremiah Achila Gogo & Another Civil Appeal No. 153 of 2004, as follows:
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> > The word "deemed" is used a great deal in modern legislation – sometimes it is used to impose for purposes of a statute an artificial construction of a word

> or phrase that would otherwise not prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain – sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible..."
>
> See also the decision of the East African Court of Justice in Anyang' Nyong'o & 10 others V. Attorney-General & others (2008) 3 KLR (EP) 398, where once again it was explained that
>
> > the Legislature uses the word for the purpose of assuming the existence of a fact that in reality does not exist".

44. Furthermore, the court ventured forward and stated thus;

> In concluding this limb of the judgment, it has to be stressed that the legal policy of Order 45 is to prevent a party, against whom judgment has been passed, from availing himself of two remedies at one and the same time; to apply for a review in the court below while his appeal (not notice of appeal) is pending in the Court of Appeal. It is now an accepted view that both the Civil Procedure Rules and the Court of Appeal Rules did not contemplate the simultaneous proceedings of review and appeal before two different courts at the same time. Where a party has filed an appeal but subsequently wishes to apply to the court from which the appeal came to review the decision impugned, that party must, in the first place withdraw the appeal.
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> So, quite clearly, the learned Judge had jurisdiction to entertain the application for review as no appeal had been filed.
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> In the result, the ground on which the 1st respondent invited the Court to find the learned Judge ought to have relied upon in rejecting the application for review is bereft of merit and is accordingly rejected.

45. Arising from the foregoing, I come to the conclusion that the filing and lodgement of the notice of appeal by and of itself does not constitute a legal bar to the filing of an application for review. In this regard, the 1st Defendant/Applicant was within his lawful rights to commence the subject application for review.

46. Next is the issue as to whether the Applicant has established and demonstrated the existence of an error and mistake apparent on the face of record. To start with, it is apposite to underscore that where an Applicant demonstrate[s] an error or mistake apparent on the face of record, then a court of law is obliged to grant review.

47. Moreover, it is also common ground that what constitutes an error or mistake on the face of record is separate and distinct from a mere error or an erroneous decision of the court. Notably, a mere error or an erroneous decision by the court, can only be remedied vide an appeal and not review.

48. To this end, it is expedient to take cognizance of the decision in the case of Nyamogo and Nyamogo Advocates v Kogo [2001] 1 EA 173; where the Court stated thus:

49. The Court there held (pp 174 – 175):

> We have carefully considered the submissions made to us by the advocates of the parties to this appeal. An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between

a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out.

An error which as to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the Court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal."

50. What constitutes an error and mistake apparent on the face of record must also be discernible from the face of record without an elaborate analysis and/or arguments. Simply put, it must be an error or mistake that can and must be seen at a glance. Certainly, such an error or mistake [if any] must not be the basis of elaborate scrutiny and arguments.

51. In the case of National Bank of Kenya Ltd v Ndungu Njau, Civil Appeal No 211 of 1996, [1997]eKLR, where the Court of appeal remarked as hereunder:

> " A review may be granted whenever the Court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground of review that another judge could have taken a different view of the matter. Nor can it be a ground of review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of the law cannot be a ground of review."
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> [See also the decision in the case of Pancras T,. Swai versus Kenya Breweries Limited [2014] eklr].

52. Bearing the foregoing exposition of the law in mind, I beg to return to the subject matter and to discern whether the Applicant has established and demonstrated the existence of an error or mistake apparent on the face of record or otherwise.

53. The Applicant has contended that same raised and canvassed the plea of res-judicata before the court [differently constituted] but the court did not consider the plea of res-judicata appropriately. Furthermore, it has been contended that had the court appreciated the annexures that were placed before the court including the consent recorded vide Nairobi ELC No. 310 of 2010, the court would have arrived at the conclusion that the issues that were being raised were indeed res-judicata.

54. The Applicant may very well have an arguable point on the question on whether or not the current suit and the application which was canvassed before the court [differently constituted] was res-judicata. However, the critical point to be addressed is whether there is an error or mistake on the face of record that can be remedied vide an application for review.

55. It is important to outline that the question of res-judicata was duly canvassed and ventilated before the court [differently constituted]. Following the elaborate submissions on the question of res-judicata, the learned judge proceeded to and rendered himself on the issue at the foot of paragraphs 32, 33 and 50 of the ruling delivered on the 16th October 2024.

56. For ease of appreciation, the learned Judge stated as hereunder;

32. The 1st respondent has raised the issue of res-judicata in view of the previous litigation over the subject matter and between the parties. For res-judicata to be correctly invoked a party must show that there is a former judgment or order; the judgment or order was on merit, the judgment or order was rendered by a court having jurisdiction over the subject matter, and the parties and there must be between the first and the second action identical parties, subject matter and cause of action.

33. In John Florence Maritime Services Ltd & Another vs C.S for Transport & Infrastructure & others (2021)eKLR Supreme Court of Kenya held that res-judicata is based on the principle of finality, which was a matter of public policy to avoid multiplicity of suits to clog the courts, occasion unnecessary costs to the parties and to vex parties on re-opening of already litigated issues, while seeking to get a favorable verdict.

50. The upshot is that I find the plea of res-judicata and, by extension, jurisdiction lacking merits. It is dismissed.

57. From the excerpts reproduced in the preceding paragraphs, it is evident that the learned judge indeed considered the plea of res-judicata and thereafter came to the conclusion that the plea of res-judicata which had been canvassed had neither been established nor proven. Notably, the learned judge was emphatic on his finding[s] on the question of res-judicata.

58. Having come to the intentional and deliberate conclusion that the plea of res-judicata was neither established nor proven, the Applicant herein was left with only one alternative, namely; to appeal to the Court of Appeal and not otherwise.

59. To my mind, the instant application and wherein the Applicant is seeking for review is a disguised invitation to this court to sit on an appeal on a decision of a court of concurrent/coordinate jurisdiction. Such an invitation is not only illegal but amounts to an absurdity.

60. Suffice it to underscore that this court cannot sit on appeal on the decision of a Judge of equal status and concurrent jurisdiction. In the case of Kenya Hotel Properties Limited *v Attorney General & 5 others (Petition 16 of 2020*) [2022] KESC 62 (KLR) (7 October 2022) (Judgment), the Supreme Court of Kenya [the apex Court] stated thus;

55. We need to emphasize and reiterate that Mutunga CJ did not in any way state that the High Court may in any way, purport to overturn or order final decisions issued by higher courts than itself to start de novo, especially on appeals that have been finally concluded by the highest court at the time. Furthermore, the concurrence by Mutunga SCJ cannot override the judgment by the majority, despite what the appellant chooses to submit. As was thus rightly noted by the High Court and the Court of Appeal, the rule of thumb is that superior courts cannot grant orders to reopen or review decisions of their peers of equal and competent jurisdiction much less those court higher than themselves. Again, we take cognizance of our finding in the Samuel Kamau Macharia case where we held that:

> " A court jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot

> entertain any proceedings. This court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (applicant), Constitutional Application Number 2 of 2011. Where the *Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation." (emphasis supplied)

61. Finally, I beg to turn to the question as to whether sufficient cause has been proven and/or established or better still, whether this court can deploy the ground of sufficient cause to review the impugned ruling and the consequential order[s] arising therefrom.

62. Learned counsel for the 3rd Defendant/Respondent implored the court to deploy the ground of sufficient cause and the inherent jurisdiction of the court to review the ruling of the court rendered on the 16th October 2024. Furthermore, learned counsel for the 3rd Defendant/Respondent also invoked the provisions of Section 1A, 1B & 3A of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.

63. My short answer to the invitation by learned counsel for the 3rd Defendant/Respondent is to the effect that there was only one application for review, namely; the application dated the 14th February 2025 and which was underpinned by the singular ground that there was an error and/or mistake on the face of record and not otherwise.

64. Moreover, if the 3rd Defendant/Respondent was minded to file an application for review [sic] on the basis on sufficient cause and/or basis, then it was incumbent upon same to file own application. However, the 3rd Defendant/Respondent cannot by side-wind sneaking a ground that was not captured at the foot of the application for review.

65. Finally, it is also important to bring to the attention of learned counsel for the 3rd Defendant/Respondent that review is statutorily provided for in terms of Section 80 of the *Civil procedure Act*, Chapter 21 Laws of Kenya as read together with Order 45 of the Civil Procedure Rules 2010. To this end, a court of law cannot therefore be invited to deploy the inherent jurisdiction to grant review. In any event, the inherent jurisdiction of the court cannot be deployed where there are clear statutory provision[s] of the Law that address the issue in question.

66. Without belabouring the point, it suffices to cite and reference the holding of the Court of Appeal in the case of Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] eKLR, where the court stated as hereunder;

> The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in Taparn vs Roitei [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case.

67. My answer to issue number three [3] is that the invitation to invoke and deploy sufficient basis for granting review is not only misconceived, but shall constitute a violation of the Doctrine of Departure.

Final Disposition:

68. Flowing from the foregoing analysis, it must have become crystal clear that the application dated the 14th April 2025 is not only misconceived but constitute a subtle invitation to this court to sit on appeal on the decision of a court of coordinate jurisdiction. In this regard, the application is certainly bereft and devoid of merits.

69. In the premises, the final orders that commend themselves to the court is as hereunder;

    i. The Application dated the 14th February 2025; be and is hereby dismissed.

    ii. Costs of the application be and are hereby awarded to the Plaintiff/Respondent only.

70. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 20TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of .

Mr. Mutuma – Court Assistant

Ms. Mburukua for the 1st Defendant/Applicant.

Ms. Gikundi for the Plaintiff/Respondent.

Mrs. Kinyanjui for the 2nd Defendant/Respondent.

Mr. Murango Mwenda for the 3rd Defendant/Respondent.