



**Wainaina v Njii & another (Sued as the Administrator of the Estate of the Late Muigai Mwaura)  
(Environment & Land Case E233 of 2023) [2025] KEELC 1289 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1289 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E233 OF 2023  
CA OCHIENG, J  
MARCH 18, 2025**

**BETWEEN**

**SAMUEL NGUGI WAINAINA ..... PLAINTIFF**

**AND**

**SIMON MWANGI NJII ..... 1<sup>ST</sup> DEFENDANT**

**ERICK MUHINDI MUIGAI ..... 2<sup>ND</sup> DEFENDANT**

**SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE MUIGAI  
MWAURA**

**RULING**

1. What is before this Court for determination is the 2<sup>nd</sup> Defendant's Notice of Motion application dated the 2<sup>nd</sup> May 2024, brought pursuant to Section 1A, 1B and 80 of the [Civil Procedure Act](#) as well as Order 45 of the Civil Procedure Rules. He seeks the following orders:
  - a. Spent.
  - b. That the Honourable Court be pleased to place the file before Justice Wabwoto for hearing and determination of the application since he is the one who issued the ruling of 30<sup>th</sup> April 2024.
  - c. That this Honourable court be pleased to review/vary and set aside the ruling delivered on 30<sup>th</sup> April 2024.
  - d. That in the alternative to prayer 3 above, the Honourable court be pleased to issue a ruling of the 2<sup>nd</sup> Defendant's application dated the 26<sup>th</sup> October 2023.
  - e. Costs of this application be borne by the Plaintiff.
2. The application is premised on the grounds on the face of it and the supporting affidavit of MUNYUA EZEKIEL NJAGI, who is the Advocate in conduct of the matter, on behalf of the 2<sup>nd</sup> Defendant.



The application is further supported by the supplementary affidavit of MUNYUA EZEKIEL NJAGI sworn on 18<sup>th</sup> September 2024. He explains that on 26<sup>th</sup> October 2023, the 2<sup>nd</sup> Defendant filed a Notice of Motion application seeking orders that rental income generated from Land Parcel No. 209/11388/40 (I.R No. 65953) be deposited into a joint interest earning account opened in the name of the Defendants' advocates.

3. He contends that after several adjournments occasioned by the Plaintiff, the court gave directions granting the Plaintiff a final adjournment and a final chance to file a reply to the said application and set a hearing date on the 6<sup>th</sup> February 2024. Further, on the said date, Counsel for the Plaintiff indicated that they would not oppose the application and made an oral application to be granted time within which, to remove all structures erected on LR No. 209/11388/40. He explains that the court indicated that it would rule on the said application and on the Plaintiff's application dated the 23<sup>rd</sup> June 2023 but vide its ruling dated the 30<sup>th</sup> April 2024, the court only determined the Plaintiff's application dated the 23<sup>rd</sup> June 2023.
4. He avers that, it is in the interest of justice, the court should review/ vary the said ruling on grounds of mistake or error apparent on the face of the record, owing to the fact that the court inadvertently failed to pronounce itself on the 2<sup>nd</sup> Defendant's application dated the 26<sup>th</sup> October 2023. He urges the court to correct the manifest omission, so that the Plaintiff does not unjustly enrich himself at the expense of the registered owner.
5. The application is opposed by the Plaintiff vide his replying affidavit sworn on 12<sup>th</sup> July 2024, in which he contends that there is no error apparent on the face of the record as failure to render a ruling on an application cannot be treated as an error apparent on the face of the record. He also contends that grounds for review raised by the 2<sup>nd</sup> Defendant are grounds of appeal not review.
6. The application is also opposed by the 1st Defendant vide his replying affidavit sworn on 28th February 2025. He explains that in the ruling delivered on 30th April 2024, the court did not pronounce itself on the 2nd Defendant's application dated the 26th October 2023 hence there's no decision to be reviewed adding that he is opposed to the said application and that since he is the registered proprietor of LR No.209/11388/40, he has a right to collect rent from the suit land.
7. The application was canvassed by way of written submissions.

### **Submissions**

8. In his submissions, the 2<sup>nd</sup> Defendant contended that he seeks a review on the ground that the court committed a mistake by inadvertently failing to pronounce itself on his application dated the 26<sup>th</sup> October 2023, a fact which undoubtedly does not require any sought of scrutiny from any party or the court, as the same is well within the court's records. To support his arguments, he relied on the following decisions: Nation Media Group & Another v Awale Transporters Limited [2022] eKLR and Zablon Mokuva v Solomon M. Chotu & 3 Others [2016] eKLR.
9. The Plaintiff in his submissions contended that whereas the court has power to review its own decisions, such power must be exercised within the framework of Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules. He submitted that the 2<sup>nd</sup> Defendant's allegation that the court's failure to address itself on the application dated the 26<sup>th</sup> October 2023, amounts to "mistake or error apparent on the face of the record", is totally wrong. He relied on several decisions: Nasibwa Wakenya Moses v University of Nairobi & Another [2019] eKLR and Gichuru v Inspector General of Police & 5 Others [2023] eKLR.



## Analysis and Determination

10. Upon consideration of the 2<sup>nd</sup> Defendant's Notice of Motion application dated the 2<sup>nd</sup> May 2024, including the respective affidavits and rivaling submissions, the only issue for determination is whether the Ruling delivered on 30<sup>th</sup> April 2024, should be reviewed.
11. The 2<sup>nd</sup> Defendant seeks a review of this court's Ruling delivered on 30<sup>th</sup> April 2024 by Justice Wabwoto. On review, Section 80 of the Civil Procedure Act stipulates thus: -

“ Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
12. While Order 45, Rule 1 (1) of the Civil Procedure Rules states inter alia:

“ 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.”
13. In this instance, the 2<sup>nd</sup> Defendant being aggrieved with the Ruling issued on 30<sup>th</sup> April 2024 seeks a review of the said Ruling insisting that the Judge failed to make a determination of his application dated the 26<sup>th</sup> October 2023 but only determined the Plaintiff's application dated the 23<sup>rd</sup> June 2023.
14. In the case of National Bank of Kenya Ltd v. Ndungu Njau (Civil Appeal No. 211 of 1996) the Court of Appeal held as follows in relation to review: -

“ 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 require no elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for 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 law cannot be a ground for review.”
15. The Applicant's main contention for review is premised on the ground that the court committed an error on the face of the record by failing to determine his Notice of Motion application dated 26<sup>th</sup> October 2023 in its Ruling delivered on 30<sup>th</sup> April 2024.



16. Looking at the Ruling of 30<sup>th</sup> April 2024, this court was categorical that the same was in respect to the Notice of Motion application dated the 23<sup>rd</sup> June 2023. However, this was despite its directions issued on 6<sup>th</sup> February 2024 that it would deliver a Ruling on two pending applications in the matter. Be that as it may, and based on the legal provisions I have quoted and associating myself with the decision cited, I opine that since there was no decision in respect to the 2<sup>nd</sup> Defendant's Notice of Motion dated the 26<sup>th</sup> October 2023, there was no error apparent on the face of record, as the Court should have just been requested to schedule a Ruling date for the impugned application. In my view, the Applicant has not met the threshold set for review as envisaged in Order 45 of the Civil Procedure Rules as well as section 80 of the *Civil Procedure Act*.
17. The 2<sup>nd</sup> Defendant made an alternative prayer that the court be pleased to issue a ruling on his Notice of Motion application dated 26<sup>th</sup> October 2023. From a reading of the legal provisions I have cited above, it is very clear that an application for review cannot have an alternative prayer. In the circumstances, I will decline to make a finding on the said alternative prayer. However, in the interest of justice, the court will issue a fresh date for the Ruling to the 2<sup>nd</sup> Defendant's application dated the 26<sup>th</sup> October, 2023.
18. In the foregoing I find the instant Notice of Motion application unmerited and will proceed to dismiss it.
19. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>th</sup> DAY OF MARCH 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Jane Okoth for Plaintiff

Ligunya for 2<sup>nd</sup> Defendant/Applicant

Ms Nyaga for 1<sup>st</sup> Defendant

Court Assistant: Joan

