



**Muthiani & 9 others v Julius Mwanzia Ngumbi, Wambua Nzioka & Bosco Mulwa (Sued as the Trustees/Officials of New Eastleigh Akamba Dancers) & another (Environment & Land Case E024 of 2023) [2025] KEELC 1378 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1378 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E024 OF 2023  
TW MURIGI, J  
MARCH 13, 2025**

**BETWEEN**

**DAVID MUSYOKI MUTHIANI ..... 1<sup>ST</sup> PLAINTIFF  
ANNA NDUKU KAVUTI ..... 2<sup>ND</sup> PLAINTIFF  
KELI KITONGA ..... 3<sup>RD</sup> PLAINTIFF  
MUKONYO KALELI ..... 4<sup>TH</sup> PLAINTIFF  
DANIEL KIOKO KYULI ..... 5<sup>TH</sup> PLAINTIFF  
JOHN KIOKO KIVUTHI ..... 6<sup>TH</sup> PLAINTIFF  
AGNES KAVILA KISWILI ..... 7<sup>TH</sup> PLAINTIFF  
MUIA MUNDE ..... 8<sup>TH</sup> PLAINTIFF  
PATRICK K NDETO ..... 9<sup>TH</sup> PLAINTIFF  
MAGDALENA MUENI PETER ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**JULIUS MWANZIA NGUMBI, WAMBUA NZIOKA & BOSCO MULWA  
(SUED AS THE TRUSTEES/OFFICIALS OF NEW EASTLEIGH AKAMBA  
DANCERS) ..... 1<sup>ST</sup> DEFENDANT  
QAIRE INVESTMENTS & COMPANY LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 8<sup>th</sup> November 2024 the 1<sup>st</sup> Defendant Applicant seeks the following orders:-



- i. Spent.
  - ii. In compliance with the status quo order issued by the Hon. Court on 5<sup>th</sup> October 2023 on status quo, the 1<sup>st</sup> Defendant be directed to continue collecting rent from the suit property for 35 rooms pending the hearing and determination of this application.
  - iii. In compliance with the status quo order issued by the Hon. Court on 5<sup>th</sup> October 2023, the 1<sup>st</sup> Defendant be directed to continue collecting rent from the suit property for 35 rooms pending the hearing and determination of this suit.
  - iv. The Plaintiffs/Respondents be ordered to cease collecting rent from the suit property and render an inventory/account of the rent collected since August 2024 to date.
  - v. An order issue directing the Officer Commanding Eastleigh North Police Station to enforce compliance with the court order and provide security to the 1<sup>st</sup> Defendant while collection of rent from the suit property.
  - vi. An order issue directing the Officer Commanding Eastleigh North Police Station to investigate and take the appropriate criminal action following the unlawful actions of the Respondents in collecting rent without authorisation, which constitutes criminal conduct under applicable laws.
  - vii. In the alternative, there be an order for immediate discharge of the current status quo orders due to misuse by the Plaintiffs/Respondents.
  - viii. Costs of the application be borne by the Respondents.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Julius Mwanzia Ngumbi and Keli Kitonga sworn on even date.

### **The Applicant's Case**

3. The deponent averred that together with Wambua Nzioka and Bosco Mulwa, they are the registered owners of the suit property since 14<sup>th</sup> November 2006 and hold the same in trust for 27 group members under New Eastleigh Akamba Dancers Co. Ltd. That from the incorporation of the company up to the time the company resolved in a general meeting to sell the suit property, the directors have been responsible for the collection of rent, banking, maintaining the premises and fulfilling all the statutory obligations including regular financial accounting to the 27 members.
4. That despite the status quo orders issued on 5<sup>th</sup> October 2023, the Respondents have unlawfully denied the 1<sup>st</sup> Defendant, the company's duly authorized directors and other 20 members access to the property and its rental units in blatant disregard of the orders. He further averred that the Respondents threatened the 1<sup>st</sup> Defendant and the company's directors with physical harm prompting them to make a report to the police.
5. That despite having reported the matter, police officers are reluctant to act on their complaint owing to the status quo order.
6. He deposed that the Respondents who are neither the registered owners nor the elected company directors have taken advantage of the status quo orders to exclusively collect rental income to the detriment of the rightful beneficiaries and as a result, the 27 members have not received their annual dividends as well as money for seeds.



7. He further deposed that arising from the refusal by the Respondent to account for the rental income, the first Plaintiff Keli Kitonga withdrew his case against the Defendants.
8. He went on to state that on 12<sup>th</sup> October 2024 they had a successful meeting with the Respondents where it was agreed that a joint committee would collect rent on behalf of members. That the Respondents reneged on the agreement and continued collecting rent from the suit property. He contended that the Respondents are not interested in prosecuting their case because they are enjoying the status quo orders issued by this court. He further contended that the continued delay in prosecuting this suit poses a great risk as the Nairobi County Government has given an early warning signal that they either develop the suit property or sell the same. In conclusion the deponent urged the court to allow the application as prayed.
9. The 2<sup>nd</sup> deponent Keli Kitonga he withdrew his suit against the Defendants on 11<sup>th</sup> September 2024 after he realised that the other Respondents were advancing their personal interests.
10. The 2<sup>nd</sup> Defendant did not file any response or participate in the hearing of the application.

### **The Respondents' Case**

11. The Respondents opposed the application through a replying affidavit sworn by David Musyoki Muthiani on 25<sup>th</sup> November 2024.
12. The Deponent contended that the instant application is a replica of the application dated 25<sup>th</sup> April 2024. He further contended that the instant application is res judicata and an abuse of court process as the former application was heard and determined on merit on 3<sup>rd</sup> June 2024.
13. He averred that the suit property belongs to the members of New Kamba Dancers Self Help Group and not New Eastleigh Akamba Dancers Co. Ltd. He further averred that the 1<sup>st</sup> Defendant does not hold the title in trust for the company but in trust for the members of the Self help group. He asserted that the group did not convert to a company.
14. The deponent maintained that the Applicant was attempting to review the orders issued on 5<sup>th</sup> October 2024 by filing several applications.
15. In conclusion, the Deponent urged the court to dismiss the application with costs.
16. The Applicant filed a further affidavit in response to the replying affidavit which I have duly considered.
17. The application was canvassed by way of written submissions. The Applicant filed its submissions dated 26/02/2025 while the Respondent filed its submissions dated 04/03/2025 which I have duly considered.

### **Analysis And Determination**

19. Having considered the application in light of the pleadings, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the ruling delivered on 5<sup>th</sup> October, 2023 should be reviewed.
20. The law that governs applications for review is set out in Section 80 of the *Civil Procedure Act* and in Order 45 Rule 1 of the Civil Procedure Rules.

Section 80 of the *Civil Procedure Act* provides that;



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.

21. Order 45 Rule 1 of the Civil Procedure Rules provides that: -

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 the judgment to the court which passed the decree or made the order without unreasonable delay.

22. The provisions of Order 45 were restated by the Court of Appeal in the case of *Benjoh Amalgamated Limited & Another Vs Kenya Commercial Bank Limited* (2014) eKLR where the Court held that:-

“In the High Court both the *Civil Procedure Act* in Section 80 and the Civil Procedure Rules in Order 45 Rule 1 confer on the court power to review. Rule 1 of order 45 shows the circumstances in which such review would be considered ranging from discovery of new and important matter or mistake or error apparent on the face of the record or any other sufficient reason but section 80 gives the High court greater amplitude for review.”

23. Similarly, in *Republic vs Public Procurement Administrative Review Board & 2 Others* (2018) eKLR the court held that: -

“Section 80 gives the power of review and Order 45 sets out the rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review.”

24. As regards the first requirement, the Applicant must show that there is discovery of new or important matter of evidence which after due diligence was not within their knowledge or could not be produced at that time. The Applicant did not demonstrate that there had been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced at the time when the order was made.

25. With regards to the second requirement, the Applicant must establish that there is an error apparent on the face of the record. In the case of *Nyamogo & Nyamogo vs Kogo* (2001) EA 170 the court held that;

“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of definitiveness inherent in its very nature and it must 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 has to be established by a long drawn process of reasoning where there may be 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 possible. Mere error or wrong is certainly no ground for review though it may be one for appeal.”

26. Similarly, in the case of Timber Manufacturers and Dealers vs Nairobi Golf Hotels (K) HCCC No. 5220 of 1992, Emukule J held that:-

“For it to be said that there is an error apparent on the face of the record, it must be obvious and self-evident and does not require an elaborate argument to be established.”

27. The Court of Appeal case of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR held 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.”

28. The Applicant has not pin pointed the errors that are apparent on the face of the record.

29. The Court is also mandated to consider if there are sufficient reasons to review the Court’s ruling.

30. Discussing what constitutes sufficient cause for purposes of review, the Court of Appeal in the case of The Official Receiver and Liquidator Vs Freight Forwarders Kenya Ltd (2000) eKLR stated that:-

These words only mean that the reason must be one that is sufficient to the court to which the application for review is made and they cannot with out at times running counter to the interest of justice limited to the discovery of new and important matter or evidence or occurring of an error apparent on the face of the record.”

31. The Applicant is seeking to review the orders issued on 5<sup>th</sup> October 2023. The orders were issued pursuant to the application dated 20<sup>th</sup> July 2023. In its ruling, the court ordered for status quo to be maintained pending the hearing and determination of the application. Thereafter, the Applicant filed an application dated 25<sup>th</sup> April 2024 seeking similar orders as in the instant application. In its ruling delivered on 26<sup>th</sup> September 2024, the court found that the application was an attempt to re-open the application afresh. I am in agreement with the Respondent that the instant application is res judicata. I find that the Applicant has not given any sufficient reason to warrant this court to review the orders issued on 5<sup>th</sup> October 2023.

32. The upshot of the foregoing is that the application dated 8<sup>th</sup> November 2024 is devoid of merit and the same is hereby dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13<sup>TH</sup> DAY OF MARCH, 2025.**

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**T. MURIGI**

**JUDGE**

In the presence of:-



Muli holding brief for Nzavi for the Plaintiffs.

Ms Thuku holding brief for Dr. Benjamain Musau for the  
1<sup>st</sup> Defendant/Applicant.

Ahmed – Court Assistant

