



**Kariuki Enterprises Limited v Kenya National Highways Authority & another (Environment & Land Petition 15 of 2022) [2025] KEELC 3455 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3455 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND PETITION 15 OF 2022**

**JG KEMEI, J**

**APRIL 29, 2025**

**IN THE MATTER OF ARTICLE 2 (1), 3(1), 10,19,22, 23, 40,47,  
165(3) (B), 258 & 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL  
FREEDOMS UNDER ARTICLE 40 & E 47 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE LAND ACT NO 6 OF 2012 AND IN THE  
MATTER OF THE LAND REGISTRATION ACT, NO 3 OF 2012**

**BETWEEN**

**KARIUKI ENTERPRISES LIMITED ..... PETITIONER**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

(with respect to the Petitioners application dated the 16/4/24)

1. Before the court is the Petitioner's application dated the 16/4/24 brought under the provisions of Art 22, 48, 50(1), 159(2) (d) of the COK, 2010 sections 1A, 1B, and 80 of the CPA, Order 45 Rule 1 of the CPR and all other enabling provisions of the law seeking the following orders;
  - a. That the entire judgement and decree of the court made on the 22/2/24 be and be hereby reviewed set aside and or vacated.



- b. The Court do reopen this matter and proceed to determine the petition on merits
  - c. The costs of the application do abide the outcome of the reopened proceedings and judgement of the petition
2. The application is based on the grounds annexed thereto and the supporting affidavit of Leonard N Kariuki sworn on 16/4/24.
  3. He deponed that this Court delivered a judgement on 22/2/24 interalia referring the matter to the Land Acquisition Tribunal (LAT) for hearing while simultaneously striking out the petition. On the basis of the said decision, he moved to the LAT on 4/3/24. Thereafter his counsel sought for the transmission of the file to tribunal for hearing and determination. Upon appearing before it on 18/3/24, the tribunal suggested to the parties to file fresh proceedings, the petition herein having been struck out hence there were no proceedings to be referred to it.
  4. He avows that he cannot sustain a fresh action at the LAT for reasons that; the petition is grounded on a purported compulsory acquisition and as such there is no justiciable decision made by the 2<sup>nd</sup> Respondent which can be litigated before the LAT; Section 133C of the Land Act, 2012 gives a 30 day window for approaching the LAT if dissatisfied with a decision of the Commission which date cannot be reckoned with in the instant case; the LAT is incapable of determining the entire claim in the petition since it lacks jurisdiction to grant orders under Art 22 and 23 of the Constitution, 2010 in relation to the violation of constitutional rights and remedies.
  5. That there is an apparent error on the face of the record to the extent that the orders of the court left the applicant with no remedy and or forum to ventilate his grievances. He also averred that the petition was filed before the LAT became operationalised on 8/9/23 following the appointment and gazettement of its members on 7/9/23. That pursuant to the decision of the SCOK in the case of Abidha Nicholus v AG & others (PET 7 /2023), the question of jurisdiction ought to have been determined upon hearing the parties and that the striking out of the petition may have been given per in curiam.
  6. The court was urged to review its orders in the interest of justice and the grounds adduced therein.
  7. The application is not opposed by any of the respondents.
  8. On 17/9/24 parties elected to canvass the application by way of written submissions which I have read and considered the written submissions.
  9. The legal provision governing the Court's power to review its decision is found in Section 80 of the CPA and amplified by Order 45 Rules 1 & 2 of the CPR that;
    - 80. Review
    - 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.
10. The above provision is further augmented by Order 45 rule 1 CPR that;  
Application for review of decree or order [Order 45, rule 1.]
- (1) 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.
11. Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review while Order 45 sets out the jurisdiction and scope of review by anchoring review on discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.
12. The scope of review was discussed in the Supreme Court of India case of *Ajit Kumar Rath v State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608 where the court had this to say:-
- “the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for tabling it. It may be pointed out that the expression “any other sufficient reason” ..... means a reason sufficiently analogous to those specified in the rule”.
13. It is trite that review is a creation of the statute as opposed to the court’s inherent powers. The power of review must be conferred by law or by necessary implication. For an applicant to succeed in such an application, he must therefore demonstrate the following; 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; On account of some mistake or error apparent on the face of the record or for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.

14. The Petitioners application is based on a number of fronts interalia that ; the judgement of the court both referred the matter to the LAT and at the same time struck out the petition. That the Tribunal found out that there was therefore nothing to refer to it for its adjudication. That as such there is an error on the face of the record.
15. The petitioner admits that the suit was filed in 2022 before *the constitution* of the LAT in 2023 and that explains why the suit was filed in the ELC as it was the forum available at the time of filing suit.
16. It was further posited that the tribunal is neither an adequate nor efficacious forum to adjudicate his claims given the scope of the reliefs sought. That the claim is premised on violation of constitutional rights to property which informed the reliefs sought and which the tribunal is divested of jurisdiction to grant.
17. Is there an error apparent on the face of the judgement? An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent from its very nature. It must be left to be determined judicially on the facts of each case. Error contemplated by the Order 45 must be such which is apparent on the face of the record and not an error which has to be searched and fished out. It must be an error of inadvertence. The line of demarcation between an error simpliciter and an error apparent on the face of the record may sometimes be thin. It can be said of an error that it is apparent on the face of the record when it is obvious and self-evident, and does not require an elaborate argument to be established. In the case of *West Bengal v Kamal Sengupta* AIR 2009 SC 476, the Court stated as follows;

“the term mistake or error apparent by its very connotation signifies an error which is evident perse from the record of the case and does not require detailed examination , scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for purposes of review. ... To put it differently an order or decision of judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court on a point of law or fact. In any case while exercising the power of review, the concerned Court cannot sit in appeal over its own judgment/ decisions.”

18. In this case the court delivered its judgment on the 22/2/24. The court observed that the position of the Petitioner was that the purported acquisition of his land by the Respondents was contrary to the law. The 1<sup>st</sup> Respondent stated that the land was acquired legally in 2008 and in 2017 the compensation monies in the sum of Kshs 59 Million was remitted to the 2<sup>nd</sup> Respondent for onward payment to the



Petitioner. That thereafter it took over possession of the suit land. The 2<sup>nd</sup> respondent attempted to distance itself with the acquisition insisting that it was carried out by the Commissioner of Lands and since it was created post 2010. It however admitted receipt of the compensation monies from the 1<sup>st</sup> Respondent for onward payment to the Petitioner but has not paid due to lack of documentation including the valuation report which it believes is with the Ministry of Lands. The Court appreciated that the 2<sup>nd</sup> Respondent is the successor of the former office of the Commissioner of Lands. In any event it has admitted that it holds the compensation arising out of the compulsory acquisition of the land in favour of the 1<sup>st</sup> Respondent the acquiring entity.

19. The Court appreciated that in a multifaceted case like this where the dominant issue revolves around compulsory acquisition of the suit land the primary jurisdiction rests with the LAT under section 133C of the *Land Act* and hence its decision that the petitioner exhausts the same before invoking this courts appellate jurisdiction.
20. In addition, the *Land Act* provides that the tribunal may in matters relating to compulsory acquisition of land, hear and determine a complaint before it arising under Articles 23 (2) and 47 (3) of *the Constitution*, using the framework set out under the *Fair Administrative Action Act* or any other law.
21. From the foregoing, the court finds that there is an error on the face of the record in that there are two conflicting orders therein . Pursuant to the slip rule in Section 99 of the CPA, the court has power to rectify its judgement by removing the paragraph which reads “In the upshot the petition herein is hereby struck out”
22. The final orders therefore read that the petition is referred to the Land Acquisition Tribunal for hearing and determination.
23. I make no orders as to costs.
24. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF APRIL, 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

Mr. Sahi for the Petitioner

NA for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

CA – Ms. Yvette

