



Abdulrahman v Mungai & 4 others (Environment & Land Case 117 of 2018) [2025] KEELC 3214 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 117 OF 2018**

MD MWANGI, J

APRIL 4, 2025

BETWEEN

ABDULRAHMAN ALI ABDULRAHMAN PLAINTIFF

AND

ROLAH WANJIRU MUNGAI 1ST DEFENDANT

THE LAND REGISTRAR, KAJIADO 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

PANAI TULITO 5TH DEFENDANT

*(In respect of the notice of motion dated 14th November 2024 by the 1st Defendant/
Applicant seeking review of the judgment delivered on 28th October 2024)*

RULING

Background

1. The application under consideration is the Notice of Motion dated 14th November 2024. The application is seeking to review the judgment herein delivered on 28th October 2024 and the resultant decree. The application is supported by the affidavit of the 1st Defendant/Applicant sworn on 14th November 2024.
2. The 1st Defendant/Applicant is acting in person. Though she makes reference to various articles of the Constitution in her application and further cites Order 9 of the Civil Procedure Act as one of the provisions of the law upon which her application is premised on, my reading of the application in its entirety discloses that it is an application seeking review of the judgment under Order 45 rules 1 and 2



of the Civil Procedure Rules on the basis of discovery of new and important matter and or on account of some mistake or error on the face of the record.

3. She deposes in her supporting affidavit that after perusal and reading of the judgment at paragraphs 5 and 7 thereof, she discovered new and important matters or evidence not previously privy to her about the legitimate owner of the suit land which makes the trial process before the court null and void. She asserts that the discovery of the new and important matters or evidence shows that the initiation of the trial process by the Plaintiff was a mockery of justice and an abuse of the court process and the judgment and decree herein should consequently be vacated and or set aside.
4. The Applicant in conclusion urges the court to give meaning to the word and spirit of the Constitution by allowing her application.

Response by the Plaintiff

5. The Plaintiff/Respondent in response to the application by the 1st Defendant/Applicant filed a replying affidavit sworn by one Yusuf Idarus on 19th November 2024. He terms the application as grossly incompetent, unmerited and urges the court to dismiss it in limine with costs.
6. The deponent asserts the application has not met the threshold for grant of orders of review under Order 45 of the Civil Procedure Rules. Further, that grounds of appeal should not be confused as grounds of review. The green card alleged to be new and important matter or evidence was within the purview of all parties as it was a document filed during discoveries and formed part of the parties' bundle of documents before the hearing.

Directions by the court.

7. On 28th January 2025, the court directed that the 1st Defendant's application be canvassed by way of written submissions while at the same time noting that the 1st Defendant/Applicant had already filed her submissions. No other party filed submissions. The court has had the opportunity to read the submissions by the 1st Defendant/Applicant dated 25th November 2024 and consider them in writing this ruling.
8. The 1st Defendant/Applicant reiterates her assertions in the replying affidavit as well as citing decided cases in support of her arguments.

Issues for determination.

9. The sole issue for determination is whether the 1st Defendant's application meets the threshold for review under Order 45 of the Civil Procedure Rules.

Determination

10. One of the court decisions that the 1st Defendant/Applicant cites in her submissions is the decision by Mrima J in the case of Samba & Company Advocates –vs- Jackline Jelangat Mengich (2023) KEHC 26997 (KLR), where the judge restated the provisions of Order 45 rule 1 of the Civil Procedure Rules and went further to cite the decision of the Court of Appeal in the case of National Bank of Kenya – vs- Ndungu Njau (1997) eKLR, where the court made the following observations;

“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 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 expansion of the law.”

11. From the 1st Defendant/Applicant’s applications and submissions, it is apparent that the Applicant prays that this court finds that the transfer of the suit land to the Plaintiff was fraudulent, irregular, null and void ab initio. Further that the judgment of the court be set aside and that an order of rectification of the register be made. These are orders that only an appellate court should issue after re-evaluating, re-analyzing, re-assessing and re-considering the evidence and the entire record of the proceedings to draw its own conclusions and determine whether the conclusions reached by the trial court are to stand or not. In her mind, the Applicant seems to confuse review for an appeal.

12. Though she alleges discovery of new and important matters or evidence, the purported new evidence allegedly came to her attention upon reading the judgment of the court at paragraphs 5 and 7, as she puts it, where the learned judge listed the documents presented in evidence including copy of the green card of the suit land and where the judge in summary noted;

“In summary, the witness’s evidence is that the register for the suit parcel was opened on 30/6/1993 when a title deed was issued to Michael Thuo Chege. On 27/1/1994, it was transferred to Harris N. Njuguna and a title deed issued to him on the same day. On 21/11/1997, the land was transferred to the Plaintiff and a title deed issued to him...”

13. How could that be discovery of new evidence when parties had filed and exchanged the lists of documents and lists of witnesses and witness statements before the matter was confirmed for hearing?

14. What Order 45 of the Civil Procedure Rules envisages is discovery of new matter or evidence which was not within the knowledge of the Applicant after exercise of due diligence. Due diligence or reasonable diligence is that which is reasonably expected from or ordinarily exercised by a person who seeks to satisfy a legal requirement or discharge an obligation.

15. To sum it up, I replicate the holding in the National Bank case (supra) hereunder verbatim;

“The power to review a judgment or an order can be exercised on the application of a person on the discovery of new and important evidence which, after 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 for 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 stabling it.

In my discernment, an order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue? In my opinion the proper way to correct a judge’s alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose.”



16. What the Applicant herein seeks is a fresh hearing. Her application falls short of the threshold for review. I disallow the same but make no orders as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF APRIL 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Rolah Wanjiru – Applicant in person

Mr. Okoth for the Plaintiff/Respondent

Mr. Serpepi alongside Mr. Omondi for the 2nd – 4th Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

