



**Wachira (Suing as Administrator of the Estate of Esther Nungari  
Kinuthia) & 2 others v Duntow & 2 others (Environment & Land Case  
E010 of 2023) [2025] KEELC 4210 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4210 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E010 OF 2023**

**OA ANGOTE, J  
MAY 29, 2025**

**BETWEEN**

**JAMES GODFREY WACHIRA (SUING AS ADMINISTRATOR OF THE ESTATE  
OF ESTHER NUNGARI KINUTHIA) ..... 1<sup>ST</sup> PLAINTIFF**

**DAVID WAWERU GAKUYA (SUING AS ADMINISTRATOR OF THE ESTATE  
OF GAKUYA WAWERU) ..... 2<sup>ND</sup> PLAINTIFF**

**JAMES GODFREY WACHIRA (SUING AS ADMINISTRATOR OF THE ESTATE  
OF WARURA MWANGI) ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ABDIWELI ADEN DUNTOW ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before this court is a Notice of Motion application dated 29<sup>th</sup> September 2024 filed by the 1<sup>st</sup> Defendant pursuant to Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Through this application, the 1<sup>st</sup> Defendant has sought the following orders:
  - i. This Honourable Court be pleased to review and set aside its ruling of 22<sup>nd</sup> April 2024 and the ensuing orders therein.
  - ii. This Honourable Court be pleased to grant such as other directions as it may deem fit and necessary.
  - iii. The costs of the application be provided for.



2. The grounds of the application, set out on its face and in the Supporting Affidavit sworn by the 1<sup>st</sup> Defendant, Abdiweli Aden Duntow, are that this court issued orders on 23<sup>rd</sup> October 2023 for the maintenance of the prevailing status quo in respect of the suit property, parcel of land number Nairobi/Block 50/627 pending the hearing and determination of the suit.
3. It was deposed that the Plaintiffs filed an application dated 6<sup>th</sup> December 2023 seeking orders that the 1<sup>st</sup> Defendant be found guilty of contempt for forcefully evicting their tenants from the suit property and that the 1<sup>st</sup> Defendant responded to the Plaintiff's application through a sworn affidavit stating that the eviction of the Plaintiff's tenants was pursuant to orders by Hon. Gakuhi Chege issued on 31<sup>st</sup> July 2023, and later amended on 15<sup>th</sup> August 2023.
4. The Applicant deponed that on 22<sup>nd</sup> April 2024, this court delivered a ruling finding the 1<sup>st</sup> Defendant guilty of contempt of the court orders given on 23<sup>rd</sup> October 2023; that he is dissatisfied with the ruling and has sought review of the same on the basis that the court found that he had failed to exhibit orders of eviction dated 31<sup>st</sup> July 2023 and had not supported his assertion and that the eviction carried out was lawful and happened prior to the issuance of the status quo orders.
5. The Applicant averred that on 31<sup>st</sup> July 2023, Hon. Gakuhi Chege ordered the Plaintiff's tenants to hand over vacant possession of the suit premises and ordered that the OCS California Police ensure compliance with the order, and that the eviction of the tenants was therefore lawful and had occurred prior to the issuance of the status quo orders.
6. The 1<sup>st</sup> Defendant/Applicant deponed that he was apprehensive that should mitigation and sentencing proceed, he would be condemned without being heard. He urged that it was in the interests of justice that the application be allowed.
7. The Plaintiffs opposed the application through a Replying Affidavit dated 10<sup>th</sup> January 2025, sworn by David Waweru Gakuya, the 2<sup>nd</sup> Plaintiff, who deponed that the orders for maintenance of the prevailing status quo in respect of Nairobi Block 50/627 (Formerly L.R. No. 36/VII/3X4 Eastleigh) were first issued on 12<sup>th</sup> July 2023 until 25<sup>th</sup> July 2023 and that on 25<sup>th</sup> July 2023, the orders for status quo were extended to 23<sup>rd</sup> October 2023.
8. It was deposed by the 2<sup>nd</sup> Plaintiff that through an application dated 27<sup>th</sup> July 2023, the court granted an order directing the Officer Commanding Station, California Police Station and Officer Commanding Police Division, to enforce the order maintaining the status quo pending the courts further directions on 23<sup>rd</sup> October 2023 and that on 23<sup>rd</sup> October 2023, the status quo orders were again extended until the suit is heard and determined.
9. It is the Plaintiffs' case that vide an application dated 13<sup>th</sup> December 2023 before Justice M.D. Mwangi, the court ordered the County Police Commander-Nairobi City County to enforce this court's orders for maintenance of status quo in respect of the suit property pending hearing and determination of this suit.
10. The 2<sup>nd</sup> Plaintiff asserted that the orders of 23<sup>rd</sup> October 2023 were ignored as the 1<sup>st</sup> Defendant has continued to interfere with the suit property by excavating and constructing despite service of the orders upon him and that on 2<sup>nd</sup> December 2023, the 1<sup>st</sup> Defendant ignored the court order issued by the court and at around 4.00am, organized and paid armed goons and police officers to forcefully evict tenants from the suit property and later proceeded to demolish it.
11. It was averred that the orders issued by Hon. Gakuhi Chege were defective as the court did not have jurisdiction over the matter, because the suit property is worth more than Kshs. 20 million and the



property illegally demolished by the 1<sup>st</sup> Defendant was worth more than Kshs. 15 million; that these orders were also not served on the Plaintiffs or their tenants and that it is the Plaintiffs who were in lawful possession of the suit property before the illegal demolition by the 1<sup>st</sup> Defendant.

12. Through a Further Affidavit dated 10<sup>th</sup> February 2025, the 2<sup>nd</sup> Plaintiff averred that on 8<sup>th</sup> February 2025 he used his mobile phone to take photos of the ongoing construction at the suit property by the 1<sup>st</sup> Defendant, which construction is in defiance of a stay order issued by this court.
13. The 1<sup>st</sup> Defendant responded through a Further Affidavit dated 26<sup>th</sup> March 2025. He stated that the orders on which the Application dated 6<sup>th</sup> December 2023 and ruling delivered on 22<sup>nd</sup> April 2024 are premised on are the orders of 23<sup>rd</sup> October 2023 and that he was not aware of any other orders referred to by the Plaintiff, issued and extended on diverse dates between July-October 2023. He deponed that he only became aware of the existence of the suit following the issuance of the orders of 23<sup>rd</sup> October 2023.
14. It was the 1<sup>st</sup> Defendant's deposition that the Plaintiff failed in their duty to serve upon him the orders issued and extended between July and August 2023; that he lawfully evicted the tenants on the suit property pursuant to the orders issued by Hon. Gakuhi Chege on 31<sup>st</sup> July 2013 and later amended on 15<sup>th</sup> August 2023 and that the Business Premises and Rent Tribunal under the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act* has jurisdiction over disputes related to controlled tenancies.
15. This application was canvassed through written submissions which this court has considered.

#### **Analysis and Determination.**

16. The 1<sup>st</sup> Defendant/Applicant has sought that this court reviews and set aside its ruling dated 22<sup>nd</sup> April 2024, in which it found the 1<sup>st</sup> Defendant, Abdiweli Aden Duntow, in contempt of the orders of court, issued on 23<sup>rd</sup> October 2023.
17. The 1<sup>st</sup> Defendant admits that while it evicted the Plaintiff's tenants, the eviction was pursuant to orders by Hon. Gakuhi Chege, of the Business Premises and Rent Tribunal issued on 31<sup>st</sup> July 2023, and later amended on 15<sup>th</sup> August 2023. He argues that the Tribunal has jurisdiction over disputes related to controlled tenancies.
18. The 1<sup>st</sup> Defendant asserts that these events took place before this court issued its orders on 23<sup>rd</sup> October 2023 and that as the said orders could not be effected, there are reasonable grounds for this court to review and set aside its ruling in which it found the 1<sup>st</sup> Defendant in contempt of court orders.
19. The Plaintiffs on their part argue that the orders issued on 23<sup>rd</sup> October 2023 were not the first ones issued by this court. Rather, that the orders for maintenance of the prevailing status quo of the suit property were issued on various dates between 12<sup>th</sup> July 2023 and 23<sup>rd</sup> October 2023, and were extended until the suit is heard and determined. According to the Plaintiffs, the 1<sup>st</sup> Defendant is in contempt of the orders issued on 23<sup>rd</sup> October 2023 because on the night of 2<sup>nd</sup> December 2023, it evicted its tenants and demolished the structures on the suit property.
20. The sole question for this court's consideration is whether the 1<sup>st</sup> Defendant has laid sufficient grounds for it to review and set aside its ruling of 22<sup>nd</sup> April 2024 in which it found the 1<sup>st</sup> Defendant in contempt of the orders of the court.



21. The remedy of review is provided for under Section 80 of the *Civil Procedure Act*, which reads as follows:

“ 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.”

22. Order 45 Rule 1 of the Civil Procedure Rules further fleshes out the grounds upon which a party may seek review and reads as follows:

“ 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.”

23. Under Order 45 Rule 1, there are three grounds upon which a claimant may seek review: on the discovery of new and important evidence which was previously unknown or could not be produced at the time the court made its decision; on account of a mistake or error apparent on the face of the record or; for any other sufficient reason.

24. The 1<sup>st</sup> Defendant has sought to rely on the ground of ‘any other sufficient reason’ for this court to review its ruling dated 22<sup>nd</sup> April 2024.

25. The Court of Appeal in *Pancras T. Swai vs Kenya Breweries Limited* [2014] eKLR considered several authorities where a party has sought to review an order on ‘other sufficient reason’ as follows:

“ As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order. In *Sarder Mohamed v. Charan Singh Nand Sing and Another* (1959) EA 793, the High Court correctly held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate. In *Shanzu Investments Limited v. Commissioner for Lands* (Civil Appeal No. 100 of 1993) this Court with respect, correctly invoked and applied its earlier decision in *Wangechi Kimata & Another Vs. Charan Singh* (C.A. No. 80 of 1985) (unreported) wherein this Court held that



“any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by Section 80 of the Civil Procedure Act; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”

26. The grounds fronted by the 1<sup>st</sup> Defendant for review are that by the time this court issued the status quo orders on 23<sup>rd</sup> October 2023, he had lawfully obtained eviction orders from the BPRT and had already evicted the Plaintiff's tenants. Accordingly, the said orders could not be effected.
27. This court has considered the application dated 6<sup>th</sup> December 2023 and the 1<sup>st</sup> Defendant's response to the application dated 15<sup>th</sup> January 2024. While through his Replying Affidavit the 1<sup>st</sup> Defendant asserted that he had obtained eviction orders and had already evicted the Plaintiffs at the time of issuance of the court orders of 23<sup>rd</sup> October 2023, the 1<sup>st</sup> Defendant did not present the orders of the Tribunal dated 31<sup>st</sup> July 2023. The 1<sup>st</sup> Defendant only adduced the orders dated 15<sup>th</sup> August 2023, which amended the orders of the BPRT dated 31<sup>st</sup> July 2023 to include an order for the OCS California Police Station to ensure compliance of the orders dated 31<sup>st</sup> July 2023.
28. The reason for the 1<sup>st</sup> Defendant's failure to present the orders dated 31<sup>st</sup> July 2023 when it filed its response dated 15<sup>th</sup> January 2024 has not been stated at all.
29. Additionally, in their earlier affidavit, the 1<sup>st</sup> Defendant neither indicated when they indeed evicted the Plaintiffs and their tenants nor did they present any evidence of such eviction at a date earlier other than 2<sup>nd</sup> December 2023, as asserted by the Plaintiff.
30. In the application before this court, the 1<sup>st</sup> Defendant has availed the orders dated 31<sup>st</sup> July 2023 in which Hon. Gakuhi Chege of the BPRT ordered in the absence of the tenants, the third parties to this suit, namely Joshua Kavuvi Mutemi and John Omondi Onyango, that:

“That the Respondent/Tenant, their agents, servants and employees be and are hereby ordered to hand over vacant possession of the suit premises on Plot Number 356/VII/3X4 in Eastleigh.”
31. A clear discrepancy arising from these orders is that they refer to a different property, being Plot Number 356/VII/3X4. The dispute before this court concerns Plot Number 36/ VII/3X4, as admitted by the 1<sup>st</sup> Defendant in his Defence dated 15<sup>th</sup> January 2024.
32. Secondly, while the 1<sup>st</sup> Defendant maintains that eviction orders were effected before 23<sup>rd</sup> October 2023, when this court extended existing status quo orders, he neither pleaded the exact date when the eviction took place nor any evidence to rebut the Plaintiff's assertion that the eviction occurred on 2<sup>nd</sup> December 2023.
33. This court has also considered its record and noted that on 23<sup>rd</sup> October 2023, Counsel for the 1<sup>st</sup> Defendant, Mr. Yunis, was present in court and he supported the Plaintiff's application to extend the status quo orders at the time. If indeed the 1<sup>st</sup> Defendant had lawfully evicted the Plaintiffs and their tenants by this date, they ought to have brought it to the attention of the court at the earliest instance, which they failed to do.
34. Furthermore, it is clear that the orders issued on 23<sup>rd</sup> October 2023 were not only issued in the presence of the 1<sup>st</sup> Defendant's Counsel, but with his consent. The 1<sup>st</sup> Defendant therefore had an opportunity to inform the court of any circumstances that would hinder the implementation of the court's orders.



35. The 1<sup>st</sup> Defendant has not disputed the validity of the orders issued by this court dated 23<sup>rd</sup> October 2023. This court has found that the 1<sup>st</sup> Defendant has failed to establish that he was precluded or hindered from obeying the court orders as there is no evidence he had evicted the Plaintiffs as at 23<sup>rd</sup> October 2023.
36. The 1<sup>st</sup> Defendant has accordingly not raised any sufficient grounds to satisfy the legal test for review or setting aside of the ruling and orders issued on 22<sup>nd</sup> April 2024.
37. Moreover, this court has taken into consideration the Plaintiff's Affidavits dated 10<sup>th</sup> January 2025 and 10<sup>th</sup> February 2025, which contain photographs of the ongoing construction on the suit property. These activities by the 1<sup>st</sup> Defendant are in gross breach of the status quo orders issued by this court on 23<sup>rd</sup> October 2023, which have not been varied or set aside, and constitutes continued contempt of court. The 1<sup>st</sup> Defendant must cease its construction activities pending the resolution of this suit.
38. For those reasons, the 1<sup>st</sup> Defendant's application dated 29<sup>th</sup> September 2024 is hereby dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of

Mr. Bashir for 1<sup>st</sup> Defendant

Ms Kiprop for Plaintiffs

Mr. Isuita for 2<sup>nd</sup> Defendant/Respondent

Mr. Simiyu for Ondieki for 1<sup>st</sup> Defendant.

Mr. Allan Kamau for 3<sup>rd</sup> Defendant

Court Assistant: Tracy

