



**Njenga v County Government of Kiambu & another (Environment & Land
Case 554 of 2017) [2025] KEELC 1096 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 554 OF 2017**

**BM EBOSO, J
MARCH 5, 2025**

BETWEEN

TERESIA NYAMBURA NJENGA PLAINTIFF

AND

COUNTY GOVERNMENT OF KIAMBU 1ST DEFENDANT

KIAMBU WATER AND SEWERAGE CO LTD 2ND DEFENDANT

RULING

1. The plaintiff initiated this suit through a plaint dated 23/5/2017. She sought: (i) an order directing the defendants to vacate land parcel number Ndumberi/Riabai/T.440 [the suit land] forthwith, and (ii) a permanent injunction restraining the defendants against entering, remaining on or interfering with the plaintiff's ownership, possession, use and enjoyment of the suit land. Her case was that she was the registered proprietor of the suit land, having inherited it from her late sister, Wanjiku Njuguna Kamuyaki alias Elizabeth Wanjiku.
2. The plaintiff contended that the late Elizabeth Wanjiku acquired the suit property from the Municipal Council of Kiambu and lived on the land for forty years prior to her demise. It was the case of the plaintiff that the defendants had trespassed onto the suit property, fenced off a portion to construct permanent heavy concrete structures, drilled a deep borehole on the land, and were continuously pumping water from the borehole
3. The defendants filed a defence dated 12/7/2017 in which they denied the allegations contained in the plaint. Their case was that the suit property was set aside for use as public utility land and was not available for allotment or for private use. They contended that the suit property had a ground masonry tank, borehole and two pump houses which were installed by the Ministry of Water and Irrigation, adding that an additional pump house was put up by the 2nd defendant in 2013. The defendants further contended that at the point of carrying out construction on the suit property, the land was



registered in the name of Kiambu County Council, hence they had a right to use the land as they deemed fit.

4. The suit was heard on 23/4/2018 and 20/6/2018 by Gacheru J. Judgment was subsequently rendered in the suit on 17/5/2019 by Gacheru J. The Court (Gacheru J) found that the plaintiff was the absolute and indefeasible registered owner of the suit property. The Court also found that the intrusion into the suit property by the defendants amounted to trespass. The Court awarded the plaintiff damages amounting to Kshs 150,000.
5. Subsequent to that, the plaintiff filed an application dated 28/7/2020 seeking to enforce the decree through eviction, on the ground that the defendants had elected to remain in occupation of the suit property in disregard of the decree given on 17/5/2019. The defendants did not file a response to the said application. On 6/12/2021, the Court (Eboso J) rendered a ruling allowing enforcement of the decree of the Court.
6. In 2024, the 1st defendant brought a post-judgment application dated 18/1/2024 seeking the following verbatim orders:

- “ 1) That this application be certified as urgent and it be heard ex-parte in the first instance as the plaintiff is likely, at any moment from now, to enforce the statutory eviction notice dated 23rd October, 2019 and pursuant to the underlying provisions of Section 152E of the *Land Act*, No. 6 of 2012 much to the detriment of the applicant and by extension, the local residents of Ndumberi and Riabai Town in Kiambu County
- 2) That pending the hearing and determination of the application, this Honourable Court be pleased to issue orders staying the Judgment delivered on 17th May 2019.
- 3) That in the alternative to prayer 2 above, this Honourable Court be pleased to set aside Judgment delivered on 17th May 2019 including all consequential orders thereto and the matter be heard a fresh on merit
- 4) That the Judgment delivered on 17th May 2019 be reviewed to include
 - a. Consideration that pursuant to Article 62(2) of *the Constitution*, all the land known as Ndumberi/Location/Riabai/Town T.440 (the property) was public land held in trust for the community (to wit, the local residents of Ndumberi and Riabai Town in Kiambu County) by the 1st defendant;
 - b. Consideration that at the time of hearing and determination of this matter and pursuant to Article 62(2), the National Land Commission which is mandated as the sole administrator of public land on behalf of the 1st defendant was not a party to the suit thereby barring them from adducing crucial evidence in their possession, much to the detriment of the defendants;
 - c. Consideration that the National Land commission vide a letter dated 14th October, 2023 confirmed that there were no available records in their custody to show the transfer of the property from the 1st defendant was prepared;



- d. Consideration that the title documentation in respect to the property and which was produced by the plaintiff was obtained fraudulently and therefore she is not the duly registered owner of the land;
 - e. Consideration that the purported transfer form in respect to the property is completely suspect on the face of it;
 - f. Consideration that vide a letter dated 12th June 2017 the Riabai Sub Location Assistant Chief confirmed that their office had not received any information on how the property changed ownership;
 - g. Consideration that the judgment of 17th May,2019 noted the defendants' assertion that for the legal allotment of the property to have been properly undertaken a proper internal mechanism ought to have been followed to the letter as is ably encapsulated under section 144 and 145 of the Local Government Act, Cap 265 (now repealed);
- 5) That this Honourable court be pleased to issue such other orders as the Court may deem just and expedient in the circumstances;
 - 6) The costs of this application be in the cause.
7. The above application dated 18/1/2024, is one of the two applications that fall for determination in this ruling. The other application falling for determination in the ruling is the plaintiff's notice of motion dated 24/1/2024, through which the plaintiff seeks: an order that the decree issued in this suit be enforced and executed by the Officer Commanding Kiambu Police Station. In the alternative, the plaintiff seeks compensation of Kshs 20,000,000 for the suit property. I will first dispose the 1st defendant's application dated 18/1/2024.

1st Defendant's Application dated 18/1/2024

8. The application dated 18/1/2024 was anchored on the grounds outlined on the face of the motion and in the three affidavits sworn by Waithira Waiyaki, dated 18/1/2024, 24/7/2024 and 23/8/2024 respectively. The application was canvassed through written submissions dated 24/7/2024, filed by Mr David Mararo on behalf of the County Attorney of the County Government of Kiambu.
9. The 1st defendant's case is that the impugned Judgment barred it from discharging its constitutional mandate of water provision, to the detriment of the local residents of Ndumberi and Riabai Town, in Kiambu County. The 1st defendant contends that it seeks a review of the Judgment due to 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 by it at the time the decree was passed. The 1st defendant further contends that the National Land Commission confirmed through its letter dated 14/10/2013 that it did not have any records in its custody to show that the transfer relating to the suit property was prepared by them. The 1st defendant adds that the title document dated 29/11/2016, which was adduced by the plaintiff during trial was obtained fraudulently, hence she is not the duly registered owner of the suit property. It is the 1st defendant's contention that on 12/6/2017, the Riabai Sub-Location Assistant Chief confirmed that their office had not received any information on how the property changed ownership. The 1st defendant contends that they are apprehensive that the plaintiff



would enforce the Statutory Eviction Notice dated 23/10/2019 if the orders sought are not granted. The 1st defendant urges the Court to allow its application and grant the reliefs sought.

10. On the replying affidavit sworn by Sospeter Nyongesa in response to the application dated 18/1/2024, the 1st defendant contends that the affidavit is defective because it was sworn at Ruiru but commissioned by Wafula Peter Simiyu, an advocate based in Mombasa.
11. The plaintiff opposed the application through grounds of opposition dated 22/2/2024, a replying affidavit sworn by Sospeter Nyongesa on even date and the written submissions dated 12/7/2024 filed by Sospeter & Company Advocates. The plaintiff's case is that the application dated 18/1/2024 is incompetent, vexatious and an abuse of the court process, hence it should be dismissed. The plaintiff faults the 1st defendant for the delay in filing the application, noting that the application was filed almost 5 years after delivery of the impugned Judgment. The plaintiff adds that the 1st defendant did not file an appeal against the impugned Judgment. The plaintiff states that she acceded to the 1st defendant's request to have the matter settled amicably out of court, adding that, the 1st defendant failed to honour its proposal. The plaintiff further contends that if indeed there is any ground for review of the Judgment, the same ought to have been discovered within a reasonable time.
12. It is the plaintiff's case that the letter dated 14/10/2013 which the 1st defendant referred to as "additional evidence which was not within its knowledge during trial" was, in fact, one of the documents contained in the plaintiff's supplementary list of documents dated 21/7/2017. The plaintiff adds that the 1st defendant not only had a chance to cross-examine the plaintiff on her supplementary list of documents but also to submit on the same in its written submissions during trial. The plaintiff contends that the 1st and 2nd defendants can be properly sued in their own right if they trespass on private property because they are bodies corporate. The plaintiff adds that, having obtained all the requisite documents from the National Land Commission, she had no reason to join them as a party in the suit.
13. The plaintiff argues that the applicant has not demonstrated to the Court that they recently discovered new evidence that was not available to them during trial, which if considered, would cause the Court to reach a different decision. The plaintiff contends that by offering to settle the matter by way of compensation, the defendants accepted to perform their obligations under the Judgment and were thus estopped from seeking a review of the Judgment.
14. The court has considered the application dated 18/1/2024. The plea for orders of stay of execution is spent at this point of rendering a ruling on the application because the stay orders were to abide the ruling which is now being rendered. Consequently, the key issue that remains to be determined in the application is whether the application meets the criteria for review of this court's own judgments.
15. The jurisdiction of this court to review its own judgments is donated by Section 80 of the [Civil Procedure Act](#) which provides 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."



16. The principles that guide the exercise of the above jurisdiction have been legislated in Order 45 rule 1 which provides 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.

17. Review jurisdiction under Order 45 rule 1 of the Civil Procedure Rules is exercised on well-settled jurisprudential principles. In *Sanitam Services (E.A.) Limited v Rentokil (K) Limited & another* [2019] eKLR the Court of Appeal outlined the following criteria upon which trial courts exercise review jurisdiction under Order 45 rule 1 of the Civil Procedure Rules:

“Jurisdiction to review a judgment or order of a court is donated by Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. By those provisions of law any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or is aggrieved by a decree or order by which no appeal is 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 – a person who fits within those categories may apply for a review of judgment or to the court which passed the decree or made the order and this should be done without unreasonable delay.”

18. In *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR the Court of Appeal emphasized the principle in the following words:

“Section 80 of the *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules gives the court unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, as it has been constantly stated this discretion should be exercised judiciously and not capriciously.....”

‘.....The main grounds for review are therefore; discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.’

19. Suffices it to state that, for this court to exercise review jurisdiction under Order 45 rule 1 of the Civil Procedure Rules, the applicant must satisfy the legislated criteria spelt out under the above legal framework. If an applicant does not satisfy the legislated criteria, the court would not have a basis for revisiting and reviewing its own judgment or ruling.



20. On the face of the motion dated 18/1/2024, the applicant seeks review of the Judgment on the ground that the transfer form which is alleged to have been the instrument of conveyance is suspect, adding that the plaintiff's title dated 29/11/2015 is fraudulent. The title was in the plaintiff's list of trial documents dated 23/5/2017 while the instrument of transfer was in the supplementary list dated 21/7/2017. Neither of the two documents can be described as newly discovered evidence or material.
21. An evaluation of the grounds put forth by the applicant does not disclose a mistake or error apparent on the face of the record. That is not all. The review application was brought about five (5) years after the impugned Judgment was rendered. No proper explanation was tendered to account for the inordinate delay.
22. It is noted on the face of the motion that the applicant wants the court to take into account certain considerations which the court failed to take into account at the time of rendering the impugned Judgment. Regrettably, this court does not have the liberty to revisit its judgments and rewrite them to take into account matters it may have failed to take into account. That jurisdiction falls within the mandate of the first appellate court. This court only revisits its judgments strictly on the basis of the legislated criteria set out under Order 45 rule 1 of the Civil Procedure Rules.
23. For the above reasons, I find that the criteria for review of a judgment under Order 45 rule 1 of the Civil Procedure Rules has not been satisfied. Put differently, this court has no jurisdiction to revisit its judgment on the grounds set out in the application under consideration. Consequently, the application dated 18/1/2024 is declined. In accordance with the general principle in Section 27 of the *Civil Procedure Act*, the applicant shall bear costs of the application. I now turn to the plaintiff's application.

Plaintiff's Application dated 24/1/2024

24. The plaintiff's application dated 24/1/2024 was anchored on the grounds outlined on the face of the motion and in the supporting affidavit sworn by the plaintiff on even date. The plaintiff's case is that Judgment was rendered in this cause on 17/5/2019 and a decree was issued on 22/10/2019 requiring the defendants to vacate the suit property. The plaintiff contends that the defendants' promise to lawfully acquire the suit property through compensation had persistently been dishonoured. The plaintiff further contends that the defendants have continued to occupy the suit property in disregard of the Judgment rendered on 17/5/2019. The plaintiff adds that the court bailiff failed to execute the decree because the defendants are "Government Agencies and Department respectively". The plaintiff contends that it is imperative to change the mode of execution to meet the ends of justice. The plaintiff argues that unless the reliefs sought in the application are granted, she stands to suffer irreparable loss.
25. The 1st defendant opposed the application through a replying affidavit sworn by Waithira Waiyaki on 23/2/2024. It is the 1st defendant's case that the application dated 24/1/2024 is frivolous, unmeritorious and an abuse of the court process because it was filed a day after the plaintiff was served with a stay of execution order dated 19/1/2024. The 1st defendant contends that if this Court grants the reliefs sought in the application dated 24/1/2024, the 1st defendant's application dated 18/1/2024 would be rendered nugatory. The 1st defendant urges this Court to dismiss the application dated 24/1/2024.
26. The Court has considered the application, the response to the application and the parties' submissions. Through the application, the plaintiff seeks: (i) an order enjoining the Officer Commanding Kiambu Police Station to enforce the decree issued in this suit; and (ii) as an alternative, an order directing the defendants to pay the plaintiff Kshs. 20,000,000 as compensation for the suit property. Consequently, the two issues that fall for determination in the application are: (i) Whether a proper basis has been laid



to warrant grant of an order directing the Officer Commanding Kiambu Police Station to enforce the decree of the court; and (ii) Whether the relief of compensation is available as part of court enforcement of the decree.

27. The application under consideration was preceded by a notice of motion by the plaintiff, dated 28/7/2020. Through the preceding motion, the plaintiff sought the following verbatim reliefs:

- “ 1. That this application be certified urgent
2. That this Honourable Court be pleased to grant the Court Bailiff authority to execute the orders/decree of the Court as per the Judgment delivered on 17th May 2019 to evict the defendants or other persons claiming through them from suit land known as Ndumberi/Riabai/T.440 and to remove all developments (if any) therein
3. That the Officer Commanding Station Kiambu Police Station do furnish security and supervise the exercise.”

28. The application came up for interpartes hearing on 6/12/2021. The defendants did not attend the hearing. Consequently, the application was heard ex-parte and granted by the Court in the following terms.

“Ruling

Judgment in this matter was rendered by Gacheru J on 17/5/2019. The resultant decree has been exhibited. The decree required the defendants to vacate the suit property.

The notice of motion dated 28/7/2020 seeks enforcement of the decree on the ground that the defendants have elected to remain in occupation of the suit property in disregard of the decree

The application is unopposed.

In the circumstances, I will allow the notice of motion dated 28/7/2020 in terms of prayers 2 and 3. Orders accordingly.

Signed 6/1/2021

B M Eboso Judge”

29. It is clear from the foregoing that, there is already a subsisting order enjoining the Officer Commanding Kiambu Police Station to provide security and ensure maintenance of law and order during enforcement of the decree. The plea for another court order is clearly an abuse of the process of the court. Secondly, the plea to enjoin the Police to perform the statutory mandate of the court bailiff is clearly misplaced. The mandate of the Police is defined by *the Constitution* and the statute. Their mandate does not include performing the function of a court bailiff.

30. On the plea for an order compelling the defendants to pay the plaintiff Kshs. 20,000,000 as an alternative to them vacating the suit land, the jurisdiction of this court at this point is to facilitate enforcement of the judgment and decree of the court as already rendered. The court does not have jurisdiction to alter the decree except with the mutual consent of the parties. In the absence of a consent, the court cannot substitute the decree with some other award that was not in the Judgment that was rendered by Gacheru J.



31. For the above reasons, the application dated 24/1/2024 is rejected for being an abuse of the process of the court and for lack of merit. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the applicant will bear costs of the application.

Disposal Orders

32. In the end, the 1st defendant's application dated 18/1/2024 and the plaintiff's application dated 24/1/2024 are rejected and dismissed. The respective applicants shall bear costs of the applications.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MARCH 2025

B M EBOSO[MR]

JUDGE

In the Presence of

Mr Nyongesa for the Plaintiff

Mr Mararo for the Applicant

Mr Tupet – Court Assistant

