



**Rono (Suing as the Executrix of the Estate of the Late David Rono) v Betty Rono  
(Suing as the Executrix of the Estate of the Late David Rono) (Environment and Land  
Miscellaneous Application E015 of 2024) [2025] KEELC 4440 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4440 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2024**

**CK NZILI, J  
JUNE 10, 2025**

**BETWEEN**

**BETTY RONO ..... APPLICANT  
SUING AS THE EXECUTRIX OF THE ESTATE OF THE LATE DAVID RONO**

**AND**

**ALMER FARM LIMITED ..... RESPONDENT**

**RULING**

1. Before the court is the application dated 7/2/2025 in which the respondent/applicant seeks:
  - (1) ...spent
  - (2) ...spent
  - (3) ...spent
  - (4) Review, variation, and or set aside the ruling and order dated 5/2/2025 allowing the application dated 7/11/2024.
  
2. The reasons are contained on the face of the application and in a supporting affidavit of Joseph Yego sworn on 11/2/2025. It is deposed that the application was allowed since it appeared unopposed other than through the preliminary objection dated 13/11/2024, which the court had in the said ruling found lacking merits. The applicant deposes that since the ruling had been reserved specifically for the preliminary objection and not the application dated 7/11/2024, allowing the said application amounted to condemning the applicant unheard hence breaching its right to a fair hearing.



3. Again, the applicant therefore deposes that the court made an error apparent on the face of the record which, if not corrected, will lead to a travesty of justice, otherwise if the decree is executed it will have far-reaching implications and will see over 1000 residents evicted from the suit land.
4. The application is opposed by the affidavit of Betty Rono sworn on 3/3/2025. The respondent deposes that the application is misconceived, dishonest, misleading, frivolous, vexatious, lacking merit, an abuse of the court process, and should be dismissed with costs since all parties were accorded a fair hearing before the application was allowed. The respondent deposes that the directions given on 7/11/2024 by the court on what parties needed to do, especially the applicant who was directed to file a response to the main application within 14 days, but chose to file a preliminary objection dated 13/11/2024, without filing any other response and or documents.
5. Further, the respondent deposes that the exercise of the right to be heard by filing only a preliminary objection did not suspend and or set aside the directions of the court given on 7/11/2024.
6. Again, the respondent deposes that under Order 51 Rule 14(1)(a) of the Civil Procedure Rules, raising a preliminary objection is one way of opposing any application and nothing prevented the respondent/ applicant from complying with the directions of 7/11/2024 by filing all responses and submissions as per paragraph 4 of the court's directions.
7. From the court record, the respondent deposes that the applicant was allowed to be heard but chose not to comply with the court's directions. As to the alleged 1000 persons on the suit land, the respondent deposes that the alleged are illegal occupiers of the land, despite the existence of a valid judgment against the applicant.
8. Order 45 Rule 1 of the Civil Procedure Rules, as read together with Section 80 of the [Civil Procedure Act](#), provides that a court may review its orders or decrees where there is an error apparent on the face of the record. An error apparent on the face of the record has been described as one that is self-evident per se, from the record and requires no detailed examination, scrutiny, and or elucidation either of facts or a legal position. See Republic -vs- Cabinet Secretary for Interior and Co-ordination of National Government; Exparte Abdullahi Said Salad [2019] eKLR and Republic -vs- Advocates Disciplinary Tribunal Exparte Apollo Mboya [2019] eKLR.
9. An error apparent on the face of record therefore arises where there could be reasonably no two opinions entertained about it, such that one could say, here is a substantial point of law. In NBK -vs- Ndungu Njau Civil Appeal No. 211 of 1996, the court held that a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission that is self-evident and should not require an elaborate argument to be established.
10. The error pointed out by the applicant is that, in its view, the ruling reserved by the previous court was restricted to the preliminary objection and not to the determination of the notice of motion on its merits. The applicant therefore deposes that it only submitted concerning the preliminary objection and not the main motion and therefore for the court to proceed to determine the merits or demerits of the main motion in the same ruling without its input, participation and attention amounted to an error apparent on the face of the records which effectively condemned the applicant unheard against the rules of fair hearing and natural justice.
11. A court of law has the power to correct errors it has made itself through no fault of either party appearing before it. Justice has been said to be a virtue that transcends all barriers. The power of review donated to a court therefore has to be exercised without any falter, statutory or otherwise, to ensure that no man is prejudiced and condemned unheard. See S. Naga Raj -vs- State of Karnataka [1993] 4 SCC 595.



12. Examples of errors apparent on the face of the record have been subject to court interpretation. In *Nyamogo K. Nyamogo -vs-Koya* [2001] EA 170, the court held that it has to be determined judiciously based on the facts of each case. The court also observed that an error on a substantial point of the law that stares one on the face of it amounts to an error apparent on the face of the record.
13. From the face of the record, I notice that the court while giving directions before setting out the ruling date was specific that the issue for determination was the preliminary objection to the main motion before it. Relying on that directive, the applicant avers that it solely made submissions to the preliminary objection and not the main motion and therefore believed that depending on how the court determines the preliminary objection, it would have a chance to respond substantively to the main motion.
14. The right to a fair hearing is based on the philosophy that no man should be condemned unheard. In *Githiga & Others -vs- Kiru Tea Factory Co. Ltd (Petitioner 13 of 2019)* [2023] KESC 41 KLR (16<sup>th</sup> June 2023) (Judgment), the court said that the right to a fair hearing before a court of law under Article 50(2) of the *Constitution* imposes a duty on the court to guarantee parties to contempt of court proceedings procedural justice.
15. The court said that procedural fairness in the administration of justice involves fair hearings and the rule against bias. The court said that a fair hearing requires a decision maker to inter alia afford a person an opportunity to be heard before making a decision affecting his or her interest. Further, the court held that procedural fairness in decision-making requires that a court shall not deprive any person of their right without due process of the law, which implies the right of a person affected by any adverse decision or action to be present before pronouncement of judgment regarding the question of life, liberty or property.
16. Guided by the foregoing case law, I am satisfied that the court fell in error to the extent that after dismissing the preliminary objection, it proceeded to allow the main motion. The court therefore reviews the ruling in terms of paragraph 26 of the ruling dated and delivered on 5/2/2025.
17. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALA ON THIS 10<sup>TH</sup> DAY OF JUNE. 2025.**

In the presence of:

Court Assistant - Dennis

Mr. Okoth for the intended interested parties

Mr. Obuya for the respondent present

Mr. Gemenet for the applicant/respondent present

**HON. C.K. NZILI**

**JUDGE, ELC KITALA.**

