



**Shagwambo (Suing on Behalf of Himself and on Behalf of 31 others) v Mwatate
Constituency Development Fund Board (Environment & Land Petition E005 of 2025)
[2025] KEELC 4393 (KLR) (Environment and Land) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4393 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E005 OF 2025
EK WABWOTO, J
JUNE 12, 2025**

BETWEEN

**LUCAS MUKONJI SHAGWAMBO APPLICANT
SUING ON BEHALF OF HIMSELF AND ON BEHALF OF 31 OTHERS**

AND

MWATATE CONSTITUENCY DEVELOPMENT FUND BOARD RESPONDENT

RULING

1. On 25th July 2023 this court differently constituted delivered its judgment in favour of the Petitioners by granting the following orders:-
 - i. A declaration that the Petitioners protected right to property has been violated by the Respondent acts of encroachment onto and trespass upon the Petitioner's properties.
 - ii. A declaration that the encroachment onto, trespass upon and expropriation of the Petitioner's property without consultation of the Petitioners is illegal and unconstitutional.
 - iii. The Respondent is ordered to adequately compensate the Petitioners for compulsorily acquiring their parcel.
 - iv. Cost of the Petition to be borne by the Respondent.
2. The Petitioners have now come back to this court vide their application dated 1st April 2024 seeking for the following reliefs:-



- i. That court be pleased to adopt the Valuation Report carried out by Amazon Valuers Limited dated 10th January 2018 to form the basis of the monetary compensation to be awarded to the Petitioners.
 - ii. That court be pleased to review its judgment and orders issued on 25th July 2023 and order that the Respondent compensate the Petitioners the sum of Kshs. 14,184,732.50 (Kenya Shillings Fourteen Million, One Hundred and Eight Four Thousand, Seven Hundred and Thirty Two and Fifty Cents).
 - iii. That costs of this application be provided for.
3. The application is premised on the grounds that the court did not specifically pronounce itself on the monetary compensation and hence it has become difficult for the Petitioner to execute a decree without any monetary value. The Valuation report by Amazon Valuers Limited dated 5th February 2018 determined the value of the compulsorily acquired parcels with which the Petitioners be compensated, the Respondent will not be prejudiced in any way since judgment had already been delivered and the application only seeks a clarification.
 4. The application was not opposed nor was there any response filed by the Respondent despite same.
 5. The parameters under which an application for review ought to be considered and evaluated were expounded, highlighted and elaborated upon in the case of *Republic versus Advocates Disciplinary Tribunal Exparte Apollo Mboya* [2019] eKLR, where the court held thus;

“ 30. The principles which can be culled out from the above noted authorities are:-

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.



- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
- x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.

6. Furthermore, the threshold to be met and established before an Applicant can partake of an order of review premised and anchored on discovery of new and important evidence, was also elucidated by the Court of Appeal in the case of *Stephen Gathua Kimani versus Nancy Wanjira Waruingi t/a Providence Auctioneers* [2019] eKLR, where the court stated and observed as hereunder;

In the end, the Learned Judge stated:

“In the present case, guided by the facts of this case, the authorities cited herein and the relevant provisions of the law, I humbly find that the applicant has not demonstrated that there has been discovery of new and important matter or evidence which after due diligence was not within his knowledge or could not be produced at that time nor has he shown that there is some mistake or error apparent on the face of the record nor has he proved that there as already stated the application for review was not made without unreasonable delay. The upshot is that my answers to number one is in the negative.”

We too are of a similar view and it is in view of this that we find, albeit with sympathy, that this appeal has no merit. It is hereby dismissed with costs to the respondent.

7. Even though the application is not opposed, In the Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others* [2018] eKLR, the court stated that;

“As a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a



matter of cause grant the sought orders. It behooves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.

8. Thus this court has a duty to look into the merits of the current application, even if the same is unopposed.

9. In the judgment delivered on 25th July 2023 the court held as follows:-

“The Valuer’s report on record has ascertained that there has been encroachment on properties within Kirugurunyi Village of Chawia location in Taita Taveta County belonging to the Petitioners. The land is unregistered and Mwatate Technical Training Institute has been developed within their properties. The Petitioners have a right to be compensated and the orders below will apply once they establish proof of ownership of the exact portions of land said to be compulsory acquired”

10. From the analysis of the foregoing, it is evident that the court considered the Valuation report but was unable to grant any monetary compensation because the same was to be applied once they establish proof of ownership of their exact portion. This in itself cannot be grant for review since there was no error apparent on the face of the record nor any omission on the part of the court to warrant this court to review the said judgment. It is also worth noting that in the instant application, the applicants have not demonstrated on what established principles and or reasons should the court review the said judgment.

11. In the circumstances, the said application has fallen short of the statutory threshold underpinned by the provisions of Order 45 Rule 1 of the Civil Procedure Rules 2010; and hence the Application, is devoid of merits. The same is hereby dismissed. Considering that the application was not opposed there shall be no orders as to costs. The file is marked as closed.

DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 12TH DAY OF JUNE 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Ms. Njuguna h/b for Mr. Yeso for Petitioner

N/A for Respondent.

Court Assistant: Mary Ngoira.

