



**Ngure Mbugua & Co Advocates v Mugo (Environment and Land Miscellaneous Application E096 of 2023) [2025] KEELC 5994 (KLR) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 5994 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E096 OF 2023  
CG MBOGO, J  
SEPTEMBER 10, 2025**

**BETWEEN**

**JOHN NGURE MBUGUA T/A NGURE MBUGUA & CO  
ADVOCATES ..... ADVOCATE**

**AND**

**JOHN NGARURO MUGO ..... CLIENT**

**RULING**

1. Before this court for determination is the notice of motion dated 15<sup>th</sup> October, 2024 filed by the client/applicant, and it is expressed to be brought under Order 45 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B, 3A and 80 of the *Civil Procedure Rules* seeking the following orders:-
  - i. That this honourable court be pleased to review and/or vary the ruling delivered on the 3<sup>rd</sup> October, 2024 by Honourable Justice Oguttu Mboya in respect of the Chamber Summons dated the 14<sup>th</sup> March, 2024.
  - ii. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of the client/applicant sworn on even date. He deposed that there was an error apparent on the face of record where there was a glaring omission by the court to appreciate that the application was doomed to fail by reason of Section 55 of the *Law of Succession Act* which expressly prohibits the distribution of capital before confirmation of grant. The client/applicant deposed that the court failed to address this issue in its ruling in respect to the dynamics of the said transaction. Further, it was deposed that the court inadvertently captured the property being acquired as Land Reference Number 209/4917/4 instead of Land Reference Number 2951/72. That it is clear that there was plain error in the decision of the Hon. Oguttu Mboya, J which is so obvious and substantial that any failure to correct it would infringe on his right to due process.



3. The client/applicant deposed that it is imperative for the court to remedy this error prior to reverting this matter for re-taxation. Further, that this court has powers to review its decision and it is in the interest of justice that the application is allowed as prayed.
4. The application was opposed by the replying affidavit of the advocate/respondent sworn on 28<sup>th</sup> May, 2025. The learned counsel began by urging the court to strike out the supplementary affidavit sworn on 17<sup>th</sup> March, 2025 for having been filed without leave of the court. The advocate/respondent deposed that the application is a scheme to delay and frustrate him from recovering his earned fees as it does not disclose any new material that was not considered by the court to warrant a review and or setting aside. Further, that the issue of representation was brought to the attention of the court in the written submissions dated 18<sup>th</sup> September, 2024 and 4<sup>th</sup> July, 2024. It was also deposed that the client/applicant has not introduced new evidence which was not in his knowledge. He deposed that the court considered all the issues raised thus setting aside the certificate of taxation arising from the ruling that was delivered on 6<sup>th</sup> March, 2024.
5. The client/applicant filed his supplementary affidavit sworn on 17<sup>th</sup> March, 2025. He deposed to the issues regarding the succession proceedings in the estate of Peter Kimanga Waiganjo (deceased), and reiterated that until the estate of the deceased is distributed to its lawful beneficiaries, any transaction remains void ab initio.
6. The application was canvassed by way of written submissions. The client/applicant filed its written submissions dated 17<sup>th</sup> March, 2025. He submitted that the taxation proceedings was premature for the reason that the sale transaction in respect of the five acres was to acquire from LR. No. 2951/72 belonging to the estate of Peter Kimanga Waiganjo (deceased). He submitted that the properties of the deceased are yet to be disposed of, and that the beneficiaries of the estate cannot move to the next stage until the pending issues are resolved. That under the present circumstances, he is at the mercy of the beneficiaries whom he paid a deposit. Further, that there was an error apparent on the face of record where the property was captured as LR. No. 209/4917/4 instead of 2951/72.
7. While relying on the case of *Chandrakant Joshibhai Patel v R* [2004] TLR, 218, and *Republic v Advocates Disciplinary Tribunal Ex-parte Apollo Mboya* [2019] eKLR, the client/applicant submitted that it would be a miscarriage of justice to allow the advocate/respondent to benefit and derive advantage from the current unfortunate predicament that he is exposed to. It was submitted that the client/applicant has satisfied all the conditions set out under Order 45 Rule 1 & 2 of the *Civil Procedure Rules* and Section 80 of the *Civil Procedure Act*. Further, that it has demonstrated sufficient and compelling reasons for this court to review the said ruling.
8. The advocate/ respondent filed his written submissions dated 29<sup>th</sup> May 2025, where it raised one issue for determination which is whether this honourable court ought to review and or vary the ruling dated 3<sup>rd</sup> October, 2024. On this issue, and while relying on the case of *Samba t/a Samba & Co. Advocates v Mengich* (Miscellaneous Application 7 of 2022) [2023] KEHC 26997 (KLR) (20 December 2023) (Ruling), the advocate/respondent submitted that the client applicant is rearguing contentions he had previously raised during the taxation of the bill of costs, his reference dated 20<sup>th</sup> March, 2024 and the instant application. Further, it was submitted that the client/applicant is misleading the court as there was no distribution at the time of the transaction since the instructions was restricted to the sale of 5 acres to be excised from LR. No. 2951/72. Further, it was submitted that the issues in this application were brought to the attention of this court vide the written submissions dated 4<sup>th</sup> July, 2024 and 18<sup>th</sup> September, 2024, which the court carefully considered.



9. On the issue of incorrect capture of the property reference, the advocate/respondent submitted that the client/applicant ought to have sought to have the error corrected as opposed to a review. Reliance was placed in the case of *Visbva Builders Limited v Moi University* (Civil Case 51 of 1999) [2024] KEHC 1891 (KLR) (1 March 2024) (Ruling). The advocate/ respondent urged the court to strike out the supplementary affidavit sworn on 17<sup>th</sup> March, 2025 and dismiss the application.
10. I have considered the application, the responses and the written submissions filed by the parties herein. I am of the view that the issue for determination is whether there is merit in the application.
11. Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules* provides as follows: -

Section 80. Review

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.”

[Order 45, rule 1.] Application for review of decree or order.

1. Any person considering himself aggrieved—
  - (1)
    - (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.
  - (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”
12. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.



13. In determining where there was error apparent on the face of record, I place reliance in the case of *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR, where it was held:-

“ 21. The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of appellate jurisdiction, which is not permissible.”

14. Also, in *Muyodi v Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, the Court of Appeal described an error apparent on the face of the record as follows:-

“... In *Nyamogo & Nyamogo v Kogo* (2001) EA 174 this court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

15. While I place reliance on the above cited authorities, and comparing the same to the circumstance of this case, I see no error apparent on the face of record. The client/applicant contended that the sale transaction of the property known as Land Reference Number 2951/72 was void ab initio owing to the fact that the succession proceedings for the estate of the deceased were yet to be finalized. He argued that the court did not address this issue, and as such, these were glaring errors amongst the incorrect reference to the property number. I have looked at the pleadings including the replying affidavit filed by the client/applicant sworn on 25<sup>th</sup> September, 2023 which was in opposition to the advocate-client bill of costs dated 4th April, 2023 as well as the written submissions of even date. I have also looked at the chamber summons dated 20<sup>th</sup> March, 2024 and its grounds thereof. The client/applicant did not challenge the validity of the sale transaction arising out of the pending successions proceedings pursuant to the provisions of Section 55 of the *Law of Succession Act*. These are issues introduced at this stage, and the grounds relied on in this application do not qualify for a review of the orders.

16. Arising from the above, this court find no merit in the notice of motion dated 15<sup>th</sup> October 2024, and it is hereby dismissed. Each party to bear its own costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**10/09/2025.**

In the presence of:



Mr. Benson Agunga - Court assistant

Ms. Mkamburi holding brief for Mr. Ngure Mbugua for the Advocate/Respondent

Mr. Antony Gikaria for the Applicant

