



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC CASE NO. 42 OF 2017**

**DANIEL KYULI & 6999 OWNERS OF A**

**SUB-DIVISION IN MAVOKO TOWN BLOCK 12.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**FELIX MUTHEMBA**

**JOSEPH NJUGUNA (Being sued on their own behalf and**

**As officials of BALOZZY WELFARE GROUP**

**ASSOCIATION.....DEFENDANTS/RESPONDENTS**

**NICHOLUS KASURU**

**MUTUA MBAI**

**DANIEL MUTUA MULINGA**

**JEREMIAH MUTISYA PAUL.....INTENDED THIRD PARTIES**

**RULING**

1. By a Notice of Motion dated 22<sup>nd</sup> November 2021 brought under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 45 Rule 1 (a) and (b) of the Civil Procedure Rules, the Plaintiffs/Applicants sought for the following orders;

(1) Spent

(2) That this Honourable Court be pleased to review the orders granted on 16<sup>th</sup> November 2021 and direct the Officer Commanding Mlolongo Police Station to enforce the status quo orders.

(3) That costs be in the cause.

2. The application is anchored on the grounds on its face together with the supporting affidavit of Daniel Kyuli, the 1<sup>st</sup> Plaintiff/Applicant where he deposed that he was aware that a court order was granted interpartes on 16<sup>th</sup> November 2021 to preserve the status quo of the suit property until the hearing and determination of this suit and that he is highly apprehensive and exposed to massive loss and damage and grave prejudice as a result of the order as the order did not include enforcement by the officer commanding Mlolongo Police Station for provision of peace and tranquillity; that various groups are now claiming adverse interest in the subject property to the extent that the Plaintiffs are unable to access the suit land; that as at now Ganana Developers Limited have registered Land Reference Number 8529/10 (Original Number 8529/7/11).

3. The Respondents did not file any responses to the application.

4. I have considered the Application and Affidavit in support and the issue that arise for determination is whether the applicant has met the threshold for grant of Review Orders.

5. Section 80 of the Civil Procedure Act as well as Order 45 of the Civil Procedure Rules make provision for review applications. Section 80

of the Civil Procedure Act 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.”**

**Order 45 Rule 1 of the Civil Procedure Rules provides for review 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 in the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgment to the court which passed the decree or made the order without unreasonable delay.”**

6. The provisions of Order 45 Rule 1 of the Civil Procedure Act demonstrate four instances where an order for review may be granted;

(a) Where there is discovery of new and important matter or evidence, or

(b) Where there is a mistake or error apparent on the face of the record, or

(c) For any other sufficient reason.

(d) The application for review ought to be made without unreasonable delay.

7. In the case of *Stephen Gathua Kimani vs. Nancy Wanjira Waruingi t/a Providence Auctioneers [2016] eKLR*, the court held as follows;

**“Discussing the scope of review, the Supreme Court of India in the case of *Ajit Kumar Rath vs. State of Orisa & Others* had this to say;**

**“A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which states in the face without any elaborate argument being needed for stabilizing it. It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.”**

8. In this matter the applicant has sought for review of the orders made on 16<sup>th</sup> November 2021 and at the same time sought for an order directing the Officer Commanding Mlolongo Police Station to enforce status quo order. It is not clear whether the applicant wanted the impugned orders reviewed or whether he wanted further orders that the orders made on 16<sup>th</sup> November 2021 be enforced by the Officer Commanding Mlolongo Police Station. The applicant’s reasons for seeking review is that he is apprehensive that various groups are claiming adverse interest in the suit property and that the Plaintiffs are exposed to massive loss and damage as the order did not include enforcement by the police.

9. I have considered the court record and I note that on 16<sup>th</sup> November 2021, this matter came up for hearing of the main suit when Mr. Mutinda, counsel for the Defendants sought for an adjournment on grounds that he needed more time to file his client’s documents. It is at that point that Mr. Wachakana, counsel for the Plaintiffs/Applicants herein opposed the application for adjournment and sought for maintenance of status quo to the effect that there should be no construction, building or interfering with the subject matter. In the interests of justice and to fastrack the hearing of this matter, the court ordered for maintenance of status quo and specifically that no party should construct on or do any further development on the suit property or sell or charge the same or deal with the same in any manner pending the hearing and determination of this matter. The matter was then given a hearing date for 24<sup>th</sup> January 2022. It is therefore clear that the orders made were in fact applied for by the applicants.

10. No proper reasons have been given by the Applicant to warrant the grant of review orders. The averment by the Applicant that he is apprehensive that he shall suffer loss and damage has no justification whatsoever and does not meet the threshold set by Order 45 Rule 1 of the Civil Procedure Rules.

11. It is my finding therefore that the Notice of Motion dated 22<sup>nd</sup> November 2021 lacks merit as the applicant has failed to establish any ground for review and the said application is dismissed with costs.

12. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 7<sup>TH</sup> DAY OF FEBRUARY 2022  
THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of:**

Mr. Wachakana for the Plaintiff/Applicant

Mr. Muli for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Interested Parties

No appearance for the Respondents

No appearance for the 3<sup>rd</sup> Interested Party