



**Kariuki & 26248 others v Attorney General & 4 others (Petition 90 of 2015)  
[2025] KEHC 3491 (KLR) (Constitutional and Human Rights) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3491 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION 90 OF 2015**

**EC MWITA, J**

**MARCH 21, 2025**

**BETWEEN**

**SAMUEL MUHIA KARIUKI & 26248 OTHERS ..... PETITIONER**

**AND**

**HON ATTORNEY GENERAL & 4 OTHERS ..... RESPONDENT**

**RULING**

1. This is a ruling on the application for review dated 18<sup>th</sup> July 2022.
2. The application seeks a review of the judgment dated 18<sup>th</sup> February 2021 and delivered on 25<sup>th</sup> February 2021. The application is supported by the affidavit of Alphonse Ndambuki Ivongo sworn on the same day.
3. The reasons for seeking review as can be seen from the grounds in the body of the application and the supporting affidavit, include that the judgment did not address matters prayed for in the petition for example that there was money in various accounts that was remitted to the 3<sup>rd</sup> respondent which money the petitioners claim as of right; the respondents impounded the money when it did not belong to them and that the petitioners cannot be punished because people known to the respondents, who should have been arrested, prosecuted and ordered to refund the petitioners' money, committed crimes.
4. The petitioners posit that the judgment did not address a core issue of refund of Kshs. 248 million which was admitted as having been impounded, being money belonging to the petitioners. The petitioners seek that the money which was impounded in accounts held by illegal entities be refunded to them as it has always been their money.
5. The 3<sup>rd</sup> respondent filed grounds of opposition in opposing the application. It contended that the application was not properly drawn and no orders/prayers were sought; that the application does not



- meet the legal threshold in section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules in that there is no discovery of new and important matter or evidence; there is no mistake or error on the face of the record, or other sufficient reason to warrant a review.
6. According to the 3<sup>rd</sup> respondent, the judgment addressed the issue of refund of the money at paragraphs 73 and 74. The 3<sup>rd</sup> respondent raised several other issues in responding to the application that demonstrate that the application is unmeritorious.
  7. During the hearing of the application, Mr. Wanyiri Kihoro appeared for the petitioners while Mr. Ouma was for the 3<sup>rd</sup> respondent. Mr. Kihoro, learned counsel, moved the application and urged the court to allow it. Counsel relied on the application and submissions in urging the application. Learned counsel pointed out that it was admitted that money had been remitted to the 3<sup>rd</sup> respondent being Kshs 248 million which belonged to the petitioners; that a report was filed showing properties worth Kshs. 387 million that were purchased using the petitioners' money; the court having made a declaration that under whatever circumstances costs which had been incurred by the petitioners should have been quantified or referred to the Deputy Registrar for assessment. Mr. Kihoro further took issue with the order that petitioners pay costs of the petition when the respondents did not pray for costs.
  8. Mr. Ouma opposed the application and relied on their grounds of opposition, submissions and decisions filed. According to Mr. Ouma, the grounds raised in support of the application do not meet the threshold in section 80 of the CPA and Order 45 of the CPR. Learned counsel argued that an application for review can only be brought if there is discovery of new and important matter or evidence or where there is an error apparent on the face of the record. None of those grounds have been demonstrated before this court. He maintained that the issue of refund was addressed by the court at paragraphs 73 and 74 of the judgment where the court stated that there was no evidence that funds were remitted to the 3<sup>rd</sup> respondent.
  9. Regarding costs, there were two sets of costs. One, costs awarded to the petitioners on a dismissed application which is not an issue for review as the petitioners can file their bill of costs for taxation. Two, costs awarded to the respondents on the dismissal of the petition. The 3<sup>rd</sup> respondent had prayed that the petition be dismissed with costs and indeed it was so dismissed. If the petitioners feel that the order on costs was erroneous, they should have appealed. He urged that the application be dismissed with costs.
  10. I have considered the application, the response and arguments by counsel for the parties. I have also considered the decision relied on.
  11. Section 80 of the *Civil Procedure Act* grants the court power to review its decisions on terms that are just. Order 45 rule (1) of the Civil Procedure Rules provides for grounds upon which a court may exercise the review jurisdiction. The court may review its judgment, ruling or order where the applicant shows that there is an error apparent on the face of the record; to correct an error or omission on the part of the court; where there is discovery of new evidence or important matter that was not in the possession of the applicant when the decision sought to be reviewed was made, or for any other sufficient cause or reason. An application for review calls on the court to exercise judicial discretion which should be exercised judicially.
  12. The law is long settled regarding when a court should exercise review jurisdiction. In *National Bank of Kenya Limited v Ndungu Njau* (Civil Appeal No. 211 of 1996) [1997] eKLR, the Court of Appeal stated that "A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established."



13. For the court to exercise review jurisdiction, the error or omission must be self-evident and easily discernible from the record without requiring arguments to establish the error or omission.
14. I have read the application, the response and the judgment sought to be reviewed. The judgment was delivered following the hearing of the petition. The court then rendered a considered judgment addressing the issues raised by the parties.
15. In the present application, the petitioners essentially complain that the court did not order a refund of the money which the petitioners argue, was their money paid to the pyramid Scheme and taken by the 3rd respondent. In the judgment, the court stated at paragraph 73:

The petitioners are proceeding on behalf/notion that when a commercial bank proceeds to close accounts held by the pyramid schemes, there were funds in those accounts, and that those funds were remitted to CBK. I find that in the instant matter the order for remittance of funds purported to have issued to, or by CBK has not been demonstrated to exist or exhibited before this court.

16. The court then observed at paragraph 74, that:

The Task Force investigations established that the accounts operated by the schemes were held in the names of the schemes or directors and were characterized by numerous deposits and withdrawals, a majority of those accounts were closed with nil balances. In addition, the bank accounts can only be frozen by Court order, thus, in respect of the impugned accounts, there were no funds held in the said accounts to be remitted to Central Bank of Kenya, in any event or at all. No evidence had been adduced supported by any documentary evidence of moneys remitted to Central Bank of Kenya.

17. The court made a finding of fact regarding any money in the pyramid scheme accounts and possible remittance of such money to the 3rd respondent.
18. It is therefore plain according to the excerpts from the judgment, that the court considered the issues raised in the petition with regard to funds and whether such funds were remitted to the 3rd respondent. The court concluded that there was no evidence first, that there was money in the pyramid accounts, or second, that money was remitted to the 3rd respondent.
19. The court having determined that the petitioners had not demonstrated that there was money in the accounts or that it was remitted to the 3rd respondent, they (petitioners) cannot argue that there is an error on the face of the record or mistake for purposes of review jurisdiction.
20. If the petitioners are of the view, that the court was wrong in holding as it did, that can only amount to an error of law or wrong conclusion of law, or fact that can only be challenged by way of an appeal.
21. Regarding costs, the record shows that on 16th May 2016, the court dismissed the 3rd respondent's application dated 11th March 2015. The court ordered that costs of that application were to abide by the result of the petition. The petition was dismissed with costs to the respondents. Any grievance over costs can only be a ground of appeal.
22. This position that wrong conclusion on fact and or law cannot be the basis for exercise review jurisdiction has been determined in many judicial decisions. Reference to a few will suffice.
23. In *National Bank of Kenya Limited v Ndungu Njau* (supra), the Court of Appeal stated that it will not be a sufficient ground for review that another Judge could have taken a different view of the matter.



It will also not be a ground for review, that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law.

24. In *Francis Origo & another v Jacob Kumali Mungala* (C.A. Civil Appeal No.149 of 2001) [2005] KECA (314), the Court of Appeal observed that an erroneous conclusion of law or evidence is not a ground for a review, but may be a good ground for appeal. And in *Pancras T. Swai v Kenya Breweries Limited* [2014] eKLR, the Court of Appeal again stated that where a party bases his review application on the failure by the court to apply the law correctly, it faults the decision on a point of law which is a good ground for appeal but not a ground for an application for review.
25. Flowing from the legal position espoused in the above decisions and upon evaluating the application and the impugned judgment, this court comes to the conclusion that the petitioners have not demonstrated an error apparent on the face of the record, discovery of new evidence or important matter, to persuade this court to exercise its review jurisdiction in their favour. I am satisfied that the court considered the issues raised in the petition and determined them, concluding that there was no evidence that money was remitted to the 3rd respondent, or that there was money in the pyramid accounts. Any errors that the petitioners perceive to have been committed in the judgment could only be errors on conclusions of law or fact which could be grounds of appeal but not review.
26. Consequently, and for the above reasons, the application is declined and dismissed. Costs being discretionary, each party shall bear own costs.

**DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MARCH 2025**

**E C MWITA**

**JUDGE**

