



**Vundi v Standard Chartered Bank Kenya Ltd & another (Civil Suit E590 of 2023)  
[2024] KEHC 12860 (KLR) (Commercial and Tax) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E590 OF 2023  
FG MUGAMBI, J  
OCTOBER 18, 2024**

**BETWEEN**

**EVERLYN NZAMBI VUNDI ..... APPLICANT**

**AND**

**STANDARD CHARTERED BANK KENYA LTD ..... 1<sup>ST</sup> RESPONDENT**

**OASIS GREEN GROWERS COMPANY LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background and introduction**

1. What is before the court for determination is the plaintiff's Motion application dated 19/8/2024 seeking an order to review and set aside the ruling delivered by this court on 14/6/2023. The application is filed pursuant to section 1A, 1B and 80 of the *Civil Procedure Act*, Order 45 rules 1-3 and order 51 rule 1 of the Civil Procedure Rules.
2. It is premised on the grounds that the plaintiff filed an application dated November 30, 2023 seeking injunctive reliefs to preserve the property known as Land Reference No.7413/23 Karen (the suit property) pending determination of the suit. The application was dismissed by the court on 14/6/2024 on the grounds that the plaintiff did not establish a prima facie case since the 1<sup>st</sup> defendant had issued the contested 90-day statutory notice.
3. The plaintiff avers that the impugned 90-day statutory notice dated 20/11/2020 was only issued, posted and emailed to the 2<sup>nd</sup> defendant and other parties but not herself. The plaintiff further contends that the 1<sup>st</sup> defendant did not rebut through evidence the assertion by the plaintiff that she was not served with the said notice. As such, the plaintiff contends that there is an error by the court in dismissing the application based on the finding that the 90-day statutory notice was issued.



4. The plaintiff further asserts that the 1<sup>st</sup> defendant had instructed an auctioneer to proceed to auction the suit property on 24/10/2024 and that if the sale proceeds before determination of the instant application, the entire suit would be rendered inconsequential.
5. The 1<sup>st</sup> defendant opposes the instant application through a replying affidavit sworn on 24/9/2024 by Boniface Machuki, its Manager of Collection and Recoveries. He avers that the application does not meet the legal threshold for the grant of the orders of review and that there are no plausible grounds for review. The 1<sup>st</sup> defendant further contends that there is no error on the face of the record and further denies that there is any new evidence that was not before the court when rendering the ruling.
6. The 1<sup>st</sup> defendant states that the application is an attempt to appeal the ruling in the guise of a review application and there are no sufficient reasons to justify a review of this court's finding.

### **Analysis and determination**

7. At the time of writing this ruling, neither of the parties had filed their written submissions on the subject application. Be that as it may, there is only one issue for determination, that is, whether the plaintiff has established sufficient grounds to review the ruling dated 14/6/2024.
8. Based on Section 80 of the *Civil Procedure Act* read together with Order 45 Rule 1 of the Civil Procedure Rules, an application seeking to review an order of the court must be brought under any of the following headings:
  - i. There is discovery of a new and important matter of evidence which despite exercise of due diligence was not known or could not be produced at the time the order was made; or
  - ii. There is a mistake or error apparent on the face of the record; or
  - iii. Any other sufficient reason.
9. In this case the plaintiff's ground for seeking a review is that she was not served with a 90-day statutory notice and therefore there is an inadvertent error by the court in dismissing her injunction application. The plaintiff argues that the court erred in finding that the 90-day statutory notice was issued.
10. I have considered this argument alongside the impugned ruling. This court found at paragraph 16 of its ruling that the statutory notice dated 24/11/2020 was sent to the plaintiff by registered post as evidenced by the certificate of postage and a 40-day statutory power of sale dated 9/10/2023 was also sent by the same means using the same address.
11. The court went on to make a finding at paragraph 17 of the ruling:

“The plaintiff admits having received the latter notice. Having noted that the two notices were sent via the same means and address, the claim that the former notice was not received is not plausible. In any case, I note that the posted address by which the notices were sent is the address as it appears on the charge and other documents executed by the plaintiff.”
12. It is clear from the foregoing that the plaintiff's case with respect to service of the 90-day notice has already been considered and a determination on the same issued by this court. Having already pronounced itself on the issue, the court is now functus officio and the plaintiff's grievances with the ruling as argued in the instant application can only be ventilated through an appeal in the Court of Appeal. The Court of Appeal in *Mary Wambui Njuguna V William Ole Nabala & 9 Others*, [2018]



eKLR, cited with approval from Chittaley & Rao in the Code of Civil Procedure (4<sup>th</sup> Edn) Vol. 3, page 3227 in which they highlighted that:

“A point which may be a good ground of appeal may not be a ground for an application for review. Thus, an erroneous view of evidence or of law is no ground for a review though it may be a good ground for an appeal.”

13. Moreover, in Republic V Public Procurement Administrative Review Board & 2 Others, [2018] eKLR, the court quoted with approval the decision in National Bank of Kenya Ltd V Ndungu Njau [1996] KLR 469 (CAK) at page 381 where the court held:

“In my discernment, an order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue” In my opinion the proper way to correct a judge’s alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose.”

14. I concur with the authorities above. A party who finds fault in a judge’s interpretation of the law or consideration of the evidence in a matter, has the liberty to appeal the matter as opposed to seeking a review.
15. In any case, even if I was persuaded to go back to the record, just for finality sake, I note that the postal address given by the plaintiff is PO Box 49348-00100 Nairobi. The address is found on amongst others, the facility letter, the charge, the affidavit of 26/1/2018, the guarantee and the bank statements issued by the 1<sup>st</sup> defendant. The 90-day statutory notice at page 68 of the 1<sup>st</sup> defendant’s bundle of documents is addressed to the plaintiff at the same address.
16. A certificate of postage accompanies the said letter which was also forwarded by email to the email address kimanzi.vundi@gmail.com. This email address is similar to what the plaintiff indicated in the offer letter at page 16 of the 1<sup>st</sup> defendant’s documents. It is the same email address that was used to send the other notices which the plaintiff does not complain about not having received.

### **Disposition**

17. Accordingly, the instant application lacks merit and is dismissed with costs awarded to the 1<sup>st</sup> defendant.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 18<sup>TH</sup> DAY OF OCTOBER 2024.**

**F. MUGAMBI**

**JUDGE**

