



**Nyosianai Management Company Limited & another v Starwood  
Apartments Management Limited & 3 others (Civil Case 101 of 2012)  
[2024] KEHC 13994 (KLR) (Commercial and Tax) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13994 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 101 OF 2012  
FG MUGAMBI, J  
NOVEMBER 8, 2024**

**BETWEEN**

**NYOSIANAI MANAGEMENT COMPANY LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**CHRISTOPHER ORINA KENYARIRI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**STARWOOD APARTMENTS MANAGEMENT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JOHN NJENGA ..... 2<sup>ND</sup> DEFENDANT**

**GREG NGUTA MUTINDA ..... 3<sup>RD</sup> DEFENDANT**

**MATHEW KIRAGU MWANGI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction and Background**

1. This Ruling determines the review application dated 11/7/2024, filed by the 2<sup>nd</sup> plaintiff herein. The application is brought on the grounds that there is an error apparent on the face of the record. The applicant contends that the Ruling referred to a plaint unknown to the plaintiffs dated 20<sup>th</sup> February 2022, at paragraph 17. Secondly, that at paragraph 9 of the Ruling, the Court states that it had carefully considered evidence tendered by parties. The applicant contends that the defendants never tendered any evidence to controvert the averments in the applicant's affidavits which remain uncontroverted. The applicant further takes issue with the contents of paragraph 13, in which the Court states that:

“While the applicant is fast to blame the respondents, no evidence has been supplied to this court to confirm that the applicant followed up on the delay.”



2. The applicant contends that the statement was erroneous as Exhibit DRCOK4 annexed to the supporting affidavit to the application which is an affidavit that was never controverted by the defendants. Relying on paragraphs 7, 13 and 14, the applicant contends that he clearly followed up on the issue. He cites paragraph 5 of the supporting affidavit to the application that annexed DRCOK4 and which states as follows:

“Simon Namada, a party and the advocate representing himself and the other defendants, sabotaged the exercise of valuation and to date the exercise has never been carried out. and marked DRCOK4 is a copy of an affidavit deposed to that effect filed in court together with an affidavit of service of the same upon the firm of Namada and Co. Advocates. The affidavit aforesaid has never been controverted.”

3. The applicant points out to a further error in the reference date of the plaint as well as a consent purportedly entered into on 31/1/2014, as shown in the Court record. He finally seeks to have this Court review its Ruling as regards the assumed monthly rent of Kshs 51,852.70 being an average arrived at by the Court suo motu so as to allow the government valuer to come up with a legitimate and independent rent figure.
4. The application is opposed by way of Grounds of Opposition dated 18<sup>th</sup> July 2024. The defendants state that the application before the Court is seeking to appeal a decision of this Court as opposed to a review and that since the Court was functus officio, the applicant ought to appeal the decision.

### **Analysis and determination**

5. The application herein is anchored on the ground that there is an apparent error on the face of the record. The Court of Appeal in *National Bank of Kenya Limited V Ndungu Njau*, [1996] KLR 469 explained what constitutes an error of law apparent on the face of the record and the scope of review as follows:

“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. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be ground for review. (emphasis mine)

6. The applicant argues that the defendants did not produce any evidence, and thus faults the Court for stating that it had carefully considered the “pleadings, submissions, and evidence filed by the parties.” Is this an error apparent on the face of the record? I think not. In my view, this issue seems more related to sentence structure rather than substance. Even if the applicant’s argument were valid, it is unlikely that the Court’s finding would have been any different. Moreover, in paragraph 11 of the Ruling, the Court clearly confirms that the evidence in this matter was presented by the applicant.
7. With regard to paragraph 13 of the Ruling, which states that “while the applicant is quick to blame the respondents, no evidence has been provided to this Court to confirm that the applicant followed up on the delay”, it is important to note, with respect, that this statement must be understood in the context of the paragraph and the one preceding it. It is undisputed that two years had passed since the appointment of the valuer. The Court’s conclusion was that both parties, the applicant and the



respondent, were responsible for the delay in completing the valuation. Again, I find no basis for reviewing the said paragraph.

8. The applicant also seeks a correction to the date of the plaint mentioned in paragraph 17 of the Ruling, where the Court incorrectly cites the date as 20<sup>th</sup> February 2022. Similarly, the consent referred to in paragraph 18(ii) is not dated 31/1/2014, but rather 24/1/2024. While these errors are unfortunate, they are minor and do not affect the substance of the Court's decision.
9. The Court finally directed that a valuation be carried out within 45 days of the Ruling, in default of which the Court further directed that the average of the two values arrived at by the previous valuers shall be presumed to be the monthly rent of the property. It is important to clarify that this averaged value would only apply if the new valuation was not conducted within the stipulated timeframe. I take note that the applicant's complaint reflects a general disagreement with the Court's interpretation of the facts and the conclusion arrived at.
10. Given these circumstances, this matter is not appropriate for review, as it appears that the applicant is essentially asking the Court to reconsider its decision from a different perspective. I concur with the respondents' position that, having conclusively rendered its judgment, this Court is now functus officio. The proper recourse for any party dissatisfied with this Court's decision is to pursue an appeal, rather than seek a review.

### **Disposition**

11. Accordingly, the application dated 11/7/2024 is dismissed with costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

