



REPUBLIC OF KENYA



Van Den Brande Jozef J & S Investments Limited v Kizondo & 3 others (Environment and Land Case E055 of 2024) [2025] KEELC 5841 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5841 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE E055 OF 2024**

LL NAIKUNI, J

JUNE 18, 2025

IN THE MATTER OF: SECTION 80 OF THE CIVIL PROCEDURE

ACT

AND

IN THE MATTER OF: ORDER 45 OF THE CIVIL PROCEDURE

RULES

AND

IN THE MATTER OF: AN APPLICATION FOR REVIEW OF THE

RULING OF THE COURT DATED 13TH

FEBRUARY, 2025

BETWEEN

VAN DEN BRANDE JOZEF J & S INVESTMENTS LIMITED APPLICANT

AND

SAID ALI KIZONDO 1ST RESPONDENT

SAID ALI MAJANI 2ND RESPONDENT

MAKOROMA JUMA ABDALLA 3RD RESPONDENT

SAID MSHENGA RUGA 4TH RESPONDENT



RULING

I. Introduction

1. This Honourable Court was called to determine the Chamber Summons application dated 24th February, 2025 by Van Den Brande Jozef the Applicant herein. The Application was brought under the provision of Order 45 of the Civil Procedure Rules, Order 51 Rules 1, 10 (1) & 10 (2) of the Civil Procedure Rules, and all other enabling provisions of the Law.
2. Upon service of the Application to the Respondent and Interested Party,

II. The Applicant's case

3. The Applicant sought for the following orders: -
 - a. Spent
 - b. That pending hearing and determination of this Application & suit, this Honourable court be pleased to issue the following orders:
 - i. Leave to apply for review of the ruling of the Honourable Court dated 13th February, 2025, per Section 80 of the Civil Procedure Act & Order 45 of the Civil Procedure Rules.
 - ii. Once Leave is granted, the order to review the ruling & orders of the Court dated 13th February, 2025.
 - iii. Correction of the annexed orders of the Court to change the title number upon which an inhibition was ordered, from Kwale/Tiwi Beach/933, To The Correct Land Number Kwale/Tiwi Beach/393.
 - c. That this Honourable Court do grant any other and further order as may be just and expedient and for the interest of justice.
 - d. That the Respondents be condemned to pay costs of this application.
 - e. That the cost of this application be borne by the Respondents.
4. The application by the Applicant was premised on the grounds, facts and testimony on the face of the application and the averments made under the 9 Paragraphed annexed supporting affidavit of Van Den Brande Jozef, the 1st Applicant herein. He averred that:-
 - a. There was a slight error on the face of the record of the Ruling dated 13th February, 2025.
 - b. Whereas the Applicant the deponent made dated 30th August, 2024, was towards registration of an inhibition over Kwale/Tiwi Beach block/393, the orders granted stated that the inhibition ought to be registered over Kwale/Tiwi Beach/933.
 - c. There was no land referenced as numbers Kwale/Tiwi Beach/933, as far as this case was concerned. It was only Land Referenced numbers Kwale/Tiwi Beach/393, as the annexed title would attest.
 - d. There was thus a slight error on the face of the record which needed to be corrected.



- e. It was necessary for the orders to be corrected so that the deponent could deliver the correct title to the Lands Registry for registration of the inhibition, and then surrender said title to the Deputy Registrar of the ELC court for safe keeping as the Ruling dated 13th February, 2025 stated.
- f. The Deponent only had in his possession, title to Kwale/ Tiwi Beach block/393 And Not Kwale/ Tiwi Beach block/933.
- g. It was therefore in the interest of justice for these orders granted as prayed.

III. Submissions

- 5. On 11th March, 2025 while all the parties were present in Court, they were directed to have the Chamber Summons Application dated 24th February, 2025 be disposed of by way of written submissions. Unfortunately, by the time of penning down this Ruling the Honourable Court was not able to access any of the submissions from neither the Judiciary CTS portal nor elsewhere. Nonetheless, it proceeded to reserve a ruling date on 18th June, 2025 on its own merit accordingly.

IV. Analysis and Determination

- 6. I have carefully read and considered the pleadings herein and the relevant provisions made by the parties. In order to arrive at an informed decision, the Honorable Court has framed the following two (2) issues for its determination.

- a. Whether the Chamber Summons Application dated 24th February, 2025 has made out a case for the review of the ruling of the Honourable Court dated 13th February, 2025, per section 80 of the *Civil Procedure Act* & Order 45 of the Civil Procedure Rules.
- b. Who will bear the Costs of Chamber Summons Application dated 24th February, 2025.

ISSUE No. a). Whether the Chamber Summons Application dated 24th February, 2025 has made out a case for the review of the ruling of the Honourable Court dated 13th February, 2025, per section 80 of the *Civil Procedure Act* & Order 45 of the Civil Procedure Rules.

- 7. Under this Sub – heading, the main substratum in this matter is rather straight forward. Simply put, it is on causing the Honourable Court to consider review, setting aside, varying and/or discharging orders made in the Ruling dated 13th February, 2025 to amend the Order on Costs. The application by the Applicant was brought under the provisions of Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Order 45 of the Civil Procedure Rules (Amendment) 2020 and all other enabling laws. The Applicant contends that there was a slight error on the face of the record of the Ruling dated 13th February, 2025. Whereas the Applicant the deponent made dated 30th August, 2024, was towards registration of an inhibition over Land Reference Numbers Kwale/Tiwi Beach block/393, the orders granted stated that the inhibition ought to be registered over Land Reference Numbers Kwale/Tiwi Beach/933. There was no Land Referenced numbers Kwale/Tiwi Beach/933, as far as this case was concerned. It was only Land Reference numbers Kwale/Tiwi Beach/393, as the annexed title will attest. There was thus a slight error on the face of the record which needed to be corrected. It was necessary for the orders to be corrected so that the deponent could deliver the correct title to the Lands Registry for registration of the inhibition, and then surrender said title to the Deputy Registrar of the ELC court for safe keeping as the Ruling dated 13th February, 2025 stated.



8. The Deponent only had in his possession, title to Land Reference numbers Kwale/ Tiwi Beach block/393 and not Kwale/ Tiwi Beach block/933. It was therefore in the interest of justice for these orders granted as prayed

9. A clear reading of these provisions indicates that Section 80 is on the power to do so while Order 45 sets out the rules on doing it. The provision of Section 80 of the Civil Procedure Act Cap 21 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.”

10. While the provision of Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“1.

(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 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.”
- c. On several occasions, Courts have dealt with the issue of review. Thus, it will not be re – inventing the wheel here. The Supreme Court in “Application No 8 of 2017, Parliamentary Service Commission – Versus - Martin Nyaga Wambora & others [2018] eKLR”, quoted with approval the findings of the East Africa Court of Appeal in “Mbogo and another - Versus - Shah [1968] EA”, upon establishing the following principles: -

(31) Consequently, drawing from the case law above, particularly Mbogo and Another v Shah, we lay down the following as guiding principles for



application(s) for review of a decision of the Court made in exercise of discretion as follows:

- i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this Court.
- ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;
- iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application.
- iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically.
- v. During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review.
- vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:
 - a. as a result, a wrong decision was arrived at; or
 - b. it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.

11. However, the Honourable Court wishes to extrapolate on a few caselaw on this subject matter. In the case of:- “Republic – Versus - Public Procurement Administrative Review Board & 2 others [2018] eKLR” it was held:

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

12. Additionally, in the case of “Sarder Mohamed – Versus - Charan Singh Nand Sing and Another (1959) EA 793” where the High Court held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.



13. Broadly speaking, in the case of “Republic – Versus - Public Procurement Administrative Review Board & 2 others [2018] e KLR” it was held: -

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

14. From the stated provisions, it is quite clear that the powers to cause any review, variation or setting aside a Court’s decision are discretionary in nature. Thus, the unfettered discretion must be exercised judiciously, not capriciously and reasonably. To qualify for being granted the orders for review, varying and/or setting aside a Court order under the above provisions to be fulfilled, the following ingredients, jurisdiction and scope are required.

- a. There should be a person who considers himself aggrieved by a Decree or order;
- b. The Decree or Order from which an appeal is allowed but from which no appeal has been preferred;
- c. A decree or order from which no appeal is allowed by this Act;
- d. There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time when the decree was passed or the order made; or
- e. 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.
- f. The review is by the Court which passed the decree or made the order without unreasonable delay.

15. I have previously stated in this Honourable Court in the case of “Sese (Suing as the Administrator of the Estate of the Late Shali Sese) – Versus - Karezi & 8 others (Environment and Land Constitutional Petition 32 of 2020) [2023] KEELC 17427 (KLR)” held that:-

“The power of review is available only when there is an error apparent on the face of the record. Indeed, this Court emphasizes that a review is 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 permissible.”

16. As regards the first requirement, the Applicant must show that there an error apparent on the face of the record. The record shows that whereas the Application the Applicant made dated 30th August, 2024, was towards registration of an inhibition over Land Reference Numbers Kwale/Tiwi Beach block/393, the orders granted stated that the inhibition ought to be registered over Kwale/Tiwi Beach/933.



17. With regards to the second requirement, the Applicant must establish that there is an error apparent on the face of the record. In the case of “Nyamogo & Nyamogo – Versus - Kogo (2001) EA 170” the court held that:-

“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the 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 a long drawn process of reasoning where there may be 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 apparent on the face of the record even though another view was possible. Mere error or wrong is certainly no ground for review though it may be one for appeal.”

18. Similarly, in the case of “Timber Manufacturers and Dealers – Versus - Nairobi Golf Hotels (K) HCCC No. 5220 of 1992”, Emukule J held that;

“For it to be said that there is an error apparent on the face of the record, it must be obvious and self-evident and does not require an elaborate argument to be established.”

19. The Applicant has shown that there was an error apparent on the face of the record. Indeed, the Applicant has pin pointed the errors that were apparent on the face of the record. The grounds laid by the Applicant disclose the said error.

20. The Court is also mandated to consider if there is sufficient reasons to review the Court’s ruling. Discussing what constitutes sufficient cause for purposes of review, the Court of Appeal in the case of “The Official Receiver and Liquidator – Versus - Freight Forwarders Kenya Ltd (2000) eKLR” stated that;

“These words only mean that the reason must be one that is sufficient to the court to which the application for review is made and they cannot without at times running counter to the interest of justice limited to the discovery of new and important matter or evidence or occurring of an error apparent on the face of the record.”

21. Equally, the Applicant has demonstrated sufficient reason to warrant a review of the Court’s ruling. Finally, the Applicant must demonstrate that the application has been made without unreasonable delay. The ruling sort to be reviewed was delivered on 13th February, 2025 and the Application herein is dated 24th February, 2025. The duration is reasonable and the application was lodged without undue influence.

22. For all these reasons herein, I find that the Chamber Summons Application dated 24th February, 2025 is merited and the same is allowed.

ISSUE b). Who will bear the Costs of Chamber Summons application dated 24th February, 2025.

23. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The



Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.

24. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased) [2022] eKLR”, that:

“

“ 58. The Black Law Dictionary defines “Cost” to means, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021.”

25. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects to have the costs in the cause

V. Conclusion and Disposition

26. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
- a. That the Chamber Summons application dated 24th February, 2025 be and is hereby found to have merit and is allowed with no orders as to costs.
 - b. That leave is hereby granted for review of the ruling of the Honourable Court dated 13th February, 2025, per section 80 of the *Civil Procedure Act* & Order 45 of the Civil Procedure Rules and an order be and is hereby made to review the ruling and orders of the Court dated 13th February, 2025.
 - c. That further to b) above, a correction of the annexed orders of the Court to change the title number upon which an inhibition was ordered, from Land Reference Numbers Kwale/ Tiwi Beach/933, to the correct Land Reference Number Kwale/Tiwi Beach/393.
 - d. That there shall be no orders as to the cost of the Chamber Summons Application dated 24th February, 2025.

It Is So Ordered Accordingly.



**RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT
KWALE THIS18THDAY OFJUNE.....2025.**

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HON. MR. JUSTICE L. L. NAIKUNI

Enviromnent And Land Court

AT Kwale

Ruling delivered in the presence of:

- a. Mr. Daniel Disii, Court Assistant.
- b. M/s. Ngoizi Advocate for the Applicants.
- c. No Appearance for the Respondents.

