



Macharia & 3 others v County Government of Kajiado (Environment and Land Case 624 of 2017) [2025] KEELC 6708 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 624 OF 2017
MD MWANGI, J
SEPTEMBER 30, 2025**

BETWEEN

**JOHN KARUMO MACHARIA 1ST PLAINTIFF
MICHAEL MWANGI NDUNGU 2ND PLAINTIFF
CHARLES KIMANI KIMOTHO 3RD PLAINTIFF
PURITY MUMBI NGUNJIRI 4TH PLAINTIFF**

AND

COUNTY GOVERNMENT OF KAJIADO DEFENDANT

(In respect of the Notice of Motion dated 3rd March, 2025 seeking review of the judgement delivered on 24th October 2024)

RULING

Background

1. The Plaintiff/Applicant approached this court through a Notice of Motion dated 3rd March, 2025 seeking for the following orders;
 - a. That this Honorable court be pleased to review and or vary the terms of the judgment delivered on 24th October,2024 in so far as the same is silent on the question of interest on the compensatory damages awarded to the Plaintiffs.
 - b. That pursuant to the order for review, this honorable court do make an additional order that the compensatory damages awarded to the Plaintiffs shall bear interest at court rates from the date of filing the suit till payment of the same in full.
 - c. That the Plaintiffs be granted leave to execute the judgment and decree before costs are assessed by the court pursuant to the Party and Party Bills of Costs dully filed.



- d. Costs of the application be in the cause.
2. The application which is premised on Article 159 of the Constitution, Sections 1A, 3A, 26 and 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules is based on the grounds on the face of it as well as the Supporting Affidavit of Daniel Mwangi Karomo sworn on 3rd March, 2025. The Deponent affirms that the judgment delivered on 24th October, 2024 by Hon. Justice M.N Gicheru in favor of the Plaintiffs did not address nor make a finding on the issue of interest.
3. While making reference to Section 26(1) of the Civil Procedure Act, the Applicants implore the court to judicially exercise its discretion and award the Plaintiffs interest on compensatory damages awarded them in this matter. This is because the court found that as rightful owners of the suit property, they were denied enjoyment, use and possession of the property when the Defendant took possession of it. Hence, it is only equitable, fair and in the interest of justice that the orders sought be granted to avert gross miscarriage of justice and substantial loss.

Defendant/Respondent's Case

4. The application was opposed by the Defendant/Respondent through Grounds of Opposition dated 8th April, 2025 where its avers that;
 1. The Application is frivolous, vexatious and abuse of the court process for offending Order 45 of the Civil Procedure Rules.
 2. This Honorable Court cannot rewrite its decision through judicial review on questions it has already pronounced itself unless it inadvertently omitted some matters.
 3. The Applicants ought to have amended their plaint during the pre-trial stage to include a relief for interest accruing on compensatory damages according to Section 100 of the Civil Procedure Act and Order 8 Rule 3 of the Civil Procedure Rules.
 4. Introduction of fresh arguments and issues which were never pleaded and seeking their adjudication by the court offends the Respondent's right to fair trial envisioned in Article 50 of the Constitution.

Courts directions

5. On 3rd April, 2025, parties were directed to file their respective submission. Both sides complied. The court has considered the submissions filed in the writing of this ruling.

Issues for determination

6. Upon careful evaluation of the Applicants' Notice of Motion application as well as parties' submissions, the singular issue for determination is whether the Plaintiffs/Applicants have met the threshold for review under Order 45 of the Civil Procedure Rules.

Determination

7. When the Plaintiffs instituted legal proceedings against the Defendant through their amended plaint dated 23/10/2018, they specifically sought for the following orders;
 - a. A declaration that the plaintiffs lawfully acquired for valuable consideration all that property known as Ngong/Township/Block 2/522, 861, 487, B, G and 888, Kajiado(suit property) and



that the plaintiffs are the lawful owners or allottees of the said parcels of land and are entitled to quiet and vacant possession thereof.

- b. A declaration that the defendants acts of forcefully possessing the suit parcels amounts to trespass and conversion.
 - c. A mandatory injunction compelling the defendants to give vacant possession of the suit parcels.
 - d. A permanent injunction restraining the defendant whether by itself, its agents and or servants from interfering, trespassing, constructing, alienating, charging, selling disposing off, dealing or in any way interfering with the plaintiffs' quiet possession of the suit property.
 - e. compensatory damages in form of cash and finance
 - f. In the alternative to prayers (c) and (d) compensatory damages as assessed herein below.
 1. Ngong/Block 2/522 – Kshs. 17, 250,000/-
 2. Ngong/Block/863 – Kshs. 17, 250,000/-
 3. Ngong/Block/487 – Kshs. 16, 675, 000/-
 4. Ngong/Block/861 – Kshs. 16, 675, 000/-
 5. Ngong/Block/Plot H – Kshs. 27, 94, 000/-
 6. Ngong/Block/888 – Kshs. 25,070,000/-Total Kshs. 120, 865,000/-
 - g. Costs of this suit.
 - h. Any other order that the court shall deem fit and just to grant.
8. Upon considering the suit, judgment was entered in favour of the Plaintiffs in terms of prayers (a), (b), (e), (f) and (h) of their amended plaint. The Plaintiffs/Applicants now want this order reviewed by adding an order to the effect that interest accrues at court rate on compensatory damages from the date of filing the suit. Although the Applicants admit that they never sought a relief on interest, it is their assertion that this court has the discretion under Section 26(1) of the *Civil Procedure Act* to grant such an order. This, according to the Applicants, is justified by the fact that the Defendant's act of taking possession of the suit property denied them its enjoyment, use and possession.
9. As rightfully and extensively submitted by parties, a court shall only review its order or judgment if an applicant demonstrates ;
- a. discovery of new and important matter or evidence which after exercise of due diligence would not have been produced when the decree was passed;
 - b. mistake or error apparent on the face of the record; or
 - c. sufficient reason.
10. The above mandatory conditions are stipulated under Order 45 Rule 1(1) of the Civil procedure Rules. Even though the application is premised on Order 45 of the Civil Procedure Rules, the Applicants have not enumerated whether and how their application complies and meets the abovementioned conditions. Instead, they maintain that they are entitled to interest because it's an equitable remedy founded on a common law and statute.



11. The court record indicates that the Applicants were granted leave to amend their Plaint prior to the hearing of the matter. Why they never utilized that opportunity to plead and seek all the remedies they desired the court to issue in their favour has not been explained. Accordingly, they should bear and accept the consequences of their omission.
12. In *Lamba v National Social Security Fund & another* (Civil Appeal E168 of 2021) [2023] KECA 124 (KLR) (3 February 2023) (Judgment), the Court of Appeal addressed the consequences of granting unpleaded for reliefs/orders in the following words;

“It is trite law that courts can only grant orders that have been prayed for in the pleadings, or make appropriate orders as it deems fit if need arises in the cause of a trial. Indeed, where a court has proceeded to grant a relief not contained in prayers in the pleading or not regularly sought by a party expressly or by implication, appellate courts have had no hesitation in annulling or overturning orders granting such reliefs. The appellant chose to abandon her prayer for special damages and must therefore lie on her own bed.”
13. I agree with the Respondent’s assertions and submissions that the Applicants are essentially seeking to re-open their case after judgment yet they had adequate time to amend their pleadings during the pre-trial stage. This approach of re-opening the suit if allowed will prejudice the Respondent’s rights to a fair hearing guaranteed under Article 50 of the *Constitution*. Besides, review was never intended parties to relitigate their suit after judgement.
14. The Supreme court emphasised on the objective of review of court orders in *Parliamentary Service Commission v Wambora & 36 others* (Application 8 of 2017) [2018] KESC 74 (KLR) (21 December 2018) (Ruling), as follows;

“We further add that the review window so envisaged is not meant to grant an applicant a second bite at the cherry. It is not an opportunity for an applicant to re-litigate his/her case. Sight should never be lost of the shore that in an application for review, like the one before the Court, at the core of the application is the Court’s exercise of discretion. It is the Court/Judge’s decision that is impugned and not the substantive application being re-argued. Hence an applicant is under a legal burden to lay a basis, to the satisfactory of this Court, that in exercise of its discretion, the limited Bench acted whimsically or misdirected itself in reaching the decision it made.”
15. Further, the Court of Appeal in *National Bank of Kenya Limited v Ndungu Njau* [1997] KECA 71 (KLR), reiterated 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. 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 a ground for review”
16. Based on the above judicial authorities, is clear to this court that the Applicants are misinterpreting Order 45 of the Civil Procedure Rules to relitigate their case at the expense and detriment of the Respondent.



17. With regard to the prayer for execution of judgment pending taxing of Bills of Costs, I find that the same has been overtaken by events because the Party and Party Bills of Costs were already taxed at Kshs. 8,275,625/= through a Ruling delivered on 28th August, 2025 by the Deputy Registrar of this court.
18. In concluding, I find that the Plaintiffs/Applicants' Notice of Motion dated 3rd March, 2025 is unmerited and proceed to dismiss it with costs to the Respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mc Ronald for the Plaintiffs/Applicants

Mr. Muimi h/b for Mr. Gitonga for the Defendant/Respondent

Court Assistant: Mpyoe

M.D. MWANGI

JUDGE

