



REPUBLIC OF KENYA



**KENYA LAW**  
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**Darvish v Nathoo & 3 others (Environment and Land Case  
E008 of 2024) [2025] KEELC 6870 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6870 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E008 OF 2024**

**YM ANGIMA, J  
OCTOBER 9, 2025**

**BETWEEN**

**ZAHRA SALIM DARVISH ..... PLAINTIFF**

**AND**

**NAZLIN AMINHOMAMED NATHOO ..... 1<sup>ST</sup> DEFENDANT**

**FAREENA AMINMOHAMED NATHOO ..... 2<sup>ND</sup> DEFENDANT**

**AMYNAZ AMINMOHMADED NATHOO ..... 3<sup>RD</sup> DEFENDANT**

**IMRAN KHOSLA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the two applications. The first in time is the 4<sup>th</sup> defendant's notice of motion dated 28.04.2025 seeking a review of the ruling dated 03.04.2025 by which the court declined to strike out the 4<sup>th</sup> defendant's name from the proceedings. The second is the plaintiff's notice of motion dated 14.05.2025 seeking a review of the same ruling whereby the court declined to enter summary judgment against the defendants.
2. The court has considered the notice of motion dated 28.04.2025. The plaintiff filed a replying affidavit sworn on 10.07.2025 in opposition thereto. It was contended that the application did not disclose any grounds for review let alone the alleged discovery of new and important evidence.
3. The sole ground raised by the 4<sup>th</sup> defendant was that upon delivery of the ruling dated 03.04.2025 his advocates wrote a letter dated 04.04.2025 to the management company of the suit property which confirmed that he was not in occupation thereof and had not paid any service charge to the said company. It was not explained why the 4<sup>th</sup> defendant did not source for such evidence during the pendency of the application. The court is of the view that had the 4<sup>th</sup> defendant exercised diligence he could have produced the said evidence before the hearing and conclusion of the earlier application.



4. The court is thus of the view that the 4<sup>th</sup> defendant has not demonstrated any genuine ground for review of the impugned ruling. In particular, the court is not satisfied that the so called new and important matter could not have been produced much earlier had the 4<sup>th</sup> defendant acted like a diligent litigant. As such, the court is not inclined to grant the review sought and disturb the ruling of 03.04.2025.
5. The court has considered the plaintiff's motion for review dated 14.05.2025. The plaintiff contended that the court erred in law in holding that the defendants had not entered appearance to the suit whereas they had filed a notice of appointment of advocates which served the same purpose as a memorandum of appearance. The plaintiff relied upon the High Court decision in Paragon Electronic Limited vs Bamburi Special Products Ltd [2020] eKLR in support of that proposition.
6. The court is of the view that if the court was wrong on a point of law or in its interpretation or application of the law, then that cannot be a basis for a review application before the same court. It can only be a ground for appeal. The court is further of the view that there is no demonstration of the existence of an error of law apparent on the face of the record as known to law. As is evident from the case cited by the plaintiff, the legal effect of filing a notice of appointment instead of a memorandum of appearance is not settled in law. Finally, the circumstances of the case cited by the plaintiff are radically different from those of the instant suit. In the cited case, a defendant who had been served with summons filed a notice of appointment of advocates instead of a memorandum of appearance whereas in the instant suit the plaintiff has adamantly refused to extract and serve summons in violation of the provisions of Order 5 of the Civil Procedure Rules.
7. The upshot of the foregoing is that the court finds absolutely no merit in the two applications. As such, the court makes the following disposal orders;
  - a. The 4<sup>th</sup> defendant's notice of motion dated 28.04.2025 is hereby dismissed for lack of merit.
  - b. The plaintiff's notice of motion dated 14.05.2025 is hereby dismissed for lack of merit.
  - c. Costs of the two applications shall be in the cause.
  - d. In case the plaintiff has not served the defendants with summons to enter appearance she shall do so within 7 days from the date hereof in default of which the suit shall stand struck out without further order.
  - e. The suit is stood over for pre-trial directions on 26.11.2025.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

.....

**Y. M. ANGIMA**  
**JUDGE.**

In the presence

Court assistant Gillian

Mr. Hans Oichoe for the plaintiff

Mr. Steve Nyamu for the 1<sup>st</sup> – 3<sup>rd</sup> defendants

Mr. Mohamed for the 4<sup>th</sup> defendant

