Jimmy & 3 others v Kiprono & 2 others (Environment and Land Miscellaneous Case E060 of 2024) [2025] KEELC 6684 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6684 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND MISCELLANEOUS CASE E060 OF 2024

A OMBWAYO, J

OCTOBER 2, 2025

BETWEEN

SARAH JIMMY ..... 1ST APPLICANT

JOHN MWANGI KARANJA & 2 OTHERS & 2 OTHERS ..... 2ND APPLICANT

AND

SUSAN KIPRONO ..... 1ST RESPONDENT

ISABELLA KIPRONO & ANOTHER & ANOTHER ..... 2ND RESPONDENT

RULING

Brief Facts

1. The 1st Applicant filed the instant application dated 22nd May, 2025 seeking the following orders:

    1. Spent.

    2. That this Honourable Court be pleased to review, set aside and/or vary the ruling and orders of this Honourable Court arising from its Ruling delivered on the 9th May, 2025 dismissing the Applicant's application seeking leave to appeal out of time, Application dated 19th December, 2024.

    3. That upon granting prayer no. 2 above, this Honourable Court invoke its inherent power in this case in the interest of substantive justice and re-instate the application dated 19th December, 2024 and fix the same for hearing on priority basis.

    4. That in the alternative to prayer 2 above, this Honourable Court be pleased to grant the Applicants leave to appeal out of time against the decision of the ruling and/or orders of Hon. Cyprian Mugambi Nguthari (chairperson) Business Premises Rent Tribunal in NakuruBPRT Case No. E 175/2023 delivered on 22nd March, 2024.

5. That the Honourable Court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.

6. That the costs of this application do abide the outcome of the substantive notice of motion application.

2. The Application was based on grounds set out and supported by the Affidavit of John Mwangi Karanja the 1st Applicant herein sworn on 22nd May, 2025. He stated that the delay was due to the previous counsel's negligence in the BPRT case E175 OF 2023. He further stated that the 24hr eviction notice dated 30th April, 2024 was addressed to 8 persons and served upon the 1st Applicant that evening in the full knowledge that 1st May, 2024 was a public holiday. He stated that eviction only affected him and not the other persons hence discriminatory. He added that there was no pending appeal to the tribunal's decision. He stated that to be evicted by strangers to a property that does not belong to them and claiming non-existent rent arrears to public land was an abuse of*the constitution* and the court process. He further stated that there was a mistake and/or error apparent on the face of the record in the ruling thus occasioning miscarriage of justice in consideration of the Applicant's submissions dated 24th January. He stated that the court's ruling failed to mention the submissions dated 28th April, 2025. He also stated that the ends of justice would best be served by reviewing the ruling and granting the Applicants an opportunity to have their substantive appeal heard.

Response

3. The 3rd Respondent filed her Replying Affidavit sworn on 4th July, 2025 where she averred that there was no authority from the other Applicants for the 1st Applicant to swear affidavit on behalf of the 2nd -4th Applicants. She further averred that the 1st Applicant was a serial litigator where matters have already been decided upon. She averred that the court had dismissed the application dated 19th December, 2024 as the Applicant had not demonstrated reason to warrant extension to appeal out of time. She averred that the Applicant cited procedural errors on filing submissions and replying affidavit on the Respondent's part yet he was fully aware that service was not proper. She averred that the Applicant served the Respondent in person rather than through their advocate on record. She further averred that there was no error apparent on record to warrant review and that the court was functus officio. She also averred that the Applicant ought to have appealed the ruling delivered on 9th May, 2025. She averred that the judgment in Petition No. E002 of 2023 has since been appealed and still pending. She went on to aver that the instant application has since been overtaken by events as the appwas dismissed and that the Applicants are not tenants in the suit premises. She added that the issue of ownership was now vested in the Court of Appeal and that this court lacked the jurisdiction to entertain any application except that of stay pending appeal.

Submissions

4. None of the parties filed submissions.

Analysis and Determination

5. This court has carefully considered the application and the main issue for determination is whether the application is merited.

6. The jurisdiction of this court for review of orders is provided for under Order 45 Rule 1 (1) of the Civil Procedure Rules which provides as follows:

> " 1. Application for review of decree or order (1) Any person considering himself aggrieved-
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> 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."

7. It is this court's view that the basis of an application for review of an order is on the recovery of new and important matters or evidence which after due diligence, was not within the Applicant's knowledge or could not be produced by him at the time when the order was made. Further an application for review may also be made on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

8. The 1st Applicant claims that the court's failure to mention his submissions dated 28th April, 2025 in its ruling was an error apparent on the face of record and the same ought to be reviewed. The 1st Applicant also claims that there was error when the eviction notice mentioned 8 parties but only had him evicted. The 3rd Respondent on the other hand contends that service of the submissions was not proper since the1st Applicant served the Respondents in person rather than through their advocates on record.

9. In the Court of Appeal case in Muyodi v Industrial and Commercial Development Corporation & Anor [2006] 1 EA 243 the court held as follows:

> " In Nyamogo and Nyamogo v Kogo [2001] EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is 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 or on points where there may 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 also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us."

10. Further, in the case of Republic v Medical Practitioners & Dentists Board & Another & another; MIO1 on behalf of MIO2 (a Minor) & another (Interested Party); Kingángá (Exparte) (Miscellaneous Civil Application 59 & 63 of 2019 (Consolidated)) [2021] KEHC 298 (KLR) the court held that:

> " In summary, in a civil proceeding, an application for review is entertained only on a ground mentioned in Order 45 Rule 1. A review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. An error apparent on the face of the record exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record. Review of the earlier order cannot be done unless the Court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. An error which is not self- evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review." [Emphasis mine]

11. From the above cited authorities, it is this court's view that an error apparent on the face of record ought to be self-evident and need not involve reasoning. It is my view that the 1st Applicant's earlier submissions dated 22nd January, 2025 is totally different from the one dated 28th April, 2025 in form. In addition, the court may need to give a reasoning with regard to consideration of the submissions dated 28th April, 2025. It is therefore my finding that the alleged error by the 1st Applicant requires reasoning with regard to the new submissions dated 28th April, 2025 thus departing from the normal position that the error should be apparent on the face of record. It is my view that the 1st Applicant ought to have filed an appeal that the court did not consider his submissions instead of the present application.

12. In view of the above, I find that the application for orders for review is not merited and is therefore dismissed with costs.

    It is so ordered.

SIGNED BY/FOR:

HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA. NAKURU ENvIRONMENT AND LAND COURT ENvIRONMENT AND LAND COURT

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