



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Koibita (Environment and Land Case 158 of 2009)  
[2025] KEELC 6551 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6551 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 158 OF 2009  
CA OCHIENG, J  
OCTOBER 2, 2025**

**BETWEEN**

**NICHOLAS RAGAE KAMAU ..... PLAINTIFF**

**AND**

**DOMINIC NJAU KOIBITA ..... DEFENDANT**

**RULING**

1. This Court determined this matter vide its ruling dated 21<sup>st</sup> November 2023. It ordered that 0.024 acres be excised from the Defendant's parcel, LR Kiambaa/Karura/T.624 and be incorporated into the Plaintiff's parcel known as LR Kiambaa/Karura/T.623.
2. Subsequently, the Defendant filed the Notice of Motion dated 23<sup>rd</sup> May 2024 which is for determination. He seeks the following Orders:
  - a. That the Ruling delivered in this matter on 21<sup>st</sup> November 2023 by Hon. Lucy N. Mbugua-Judge be reviewed /be set aside as there is an error apparent of court's Ruling.
  - b. That the court do appoint the institute of surveyors of Kenya to compute the acreage of the suit premises' mutation forms and the surveyor's report for the suit premises and make a report to court.
  - c. That the District Land Surveyor Kiambu to review the suit premises mutation forms and the surveyor's report for the suit premises and make a report to court.
  - d. That the costs of this application be in the cause.
3. The application is premised on grounds on its face and on the supporting affidavit of Andrew Njogu Gachoka, Advocate. He asserts that there was an error in computation of the acreage in the Land Registrar's and Surveyor's report dated 20<sup>th</sup> September 2023 and that the Judge failed to consider



previous reports produced in Court and as a result, execution of this court's judgement would mean that the Defendant's residential houses and perimeter wall will be demolished.

4. He contends that aforementioned report of 20<sup>th</sup> September 2023 is disputed by Wallace N. Mbugua, a licensed surveyor vide his report of April 2024 and that his report dated 14<sup>th</sup> November 2023 also raises reservations of errors on computation by the land surveyor. He annexed reports dated 12<sup>th</sup> January 2010, 20<sup>th</sup> September 2023, 14<sup>th</sup> November 2023 and photographs of the suit property.
5. The Plaintiff filed Grounds of Opposition. He asserts that in its Ruling, the Court enforced joint findings of the office of the Land Registrar and the District land Surveyor Kiambu, thus it is functus officio. Further, that the application is coined as an Appeal thus it is defective and does not meet the threshold for review.
6. The instant application was canvassed by way of written submissions.

### **Submissions**

7. The Defendant submits that the Honourable Judge misdirected herself in failing to consider previous and subsequent survey reports tabled before her to determine the right computation of acreage thus there exists an apparent error, which is sufficient reason to warrant review. He relies on the case of *Grace Akinyi v Gladys Kemunto Obiri & Another* [2016] eKLR to support this argument.
8. On his part, the Plaintiff submits that a party who fails to appeal cannot fall back on review to get a second bite at the cherry. He points out that no error apparent on the face of the record was demonstrated by the Defendant. Further, that all survey reports relied upon by the Defendant including the 2010 reports and Wallace Mbugua's report were all available and on record long before the Court's decision of 21<sup>st</sup> November 2023 thus there is no new evidence that has emerged post judgement that could qualify as a ground for review thus the Defendant is re litigating a matter that was concluded.
9. To buttress his averments, he relied on the following decisions: *Abdalla & 6 Others v Khansa Developers Limited & 3 Others* (Constitutional Petition 16 of 2022) [2024] KEELC 13226 (KLR) (18 November 2024) (RULING) and *Andrew Marigwa v Josephat Ondieki Kebati* [20017] eKLR.

### **Analysis and Determination**

10. Having considered the instant Notice of Motion application, Grounds of opposition and rivalling submissions, the only issue for determination is whether the Defendant has met the threshold for review of this Court's Ruling of 21<sup>st</sup> November 2023.
11. The Defendant has sought for a review of this Court's Ruling dated the 21<sup>st</sup> November, 2023 contending that there was an error in computation of the acreage in the Land Registrar's and Surveyor's report dated 20<sup>th</sup> September 2023 and that the Judge failed to consider previous reports produced in Court and as a result, execution of this court's judgement would mean that the Defendant's residential houses and perimeter wall will be demolished, which application is opposed by the Plaintiff.
12. The legal provisions governing review of Court Orders are contained in Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules. Section 80 of the [Civil Procedure Act](#) provides that:

“ 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.”

13. While Order 45, rule 1 (1) of the Civil Procedure Rules provides as follows:

“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.’

14. The Supreme Court stated as follows in the case of Parliamentary Service Commission v Martin Nyaga Wambora & Others [2018] eKLR;

“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...”

15. In Supreme Court No. 3 of 2014; Robert Tom Martins Kibisu v Republic [2018] eKLR, the court stated that:

“(49) .... while the application before the Court is framed as one seeking review for correction of errors apparent on the face of the record, the mischief is in the details. An application cannot be said to be for correction of errors when it is anchored and replicate with allegation of discontentment with the Court’s finding and/or appreciation of legal principles and their interpretation thereof. Such dissatisfaction is normally a ground for appeal.”

16. In the case of Nyamogo & Nyamogo -vs- Kogo (2001) EA 174 the Court held 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 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 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 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.” Emphasis Mine



17. While in the case of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR, the Court of Appeal held that:

“In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.’

18. In this instance, the Defendant seeks the Court to review its aforementioned decision claiming that there is an error in computation of the acreage. The Plaintiff has opposed the instant application insisting that the Court enforced joint findings of the office of the Land Registrar and the District Land Surveyor Kiambu, thus it is functus officio. Further, that the application is coined as an Appeal thus it is defective and does not meet the threshold for review. I have had a chance to peruse the decision of the Judge dated the 21<sup>st</sup> November, 2023 and note she indeed took into account the Land Registrar and Surveyor’s report dated the 20<sup>th</sup> September, 2023. I note as per the provisions of the [Land Registration Act](#), it is the Land Registrar mandated to make the first determination of any disputed boundary.

19. Based on the facts as presented while relying on the legal provisions cited above and associating myself with the quoted decisions, I find that the Defendant has not met the threshold set for review as he has failed to demonstrate the alleged error apparent on the face of the record. I opine that if the Defendant was indeed aggrieved by the order issued on 21<sup>st</sup> November, 2023, he should have proceeded to lodge an Appeal instead of the instant application for review. I opine that this Court is hence functus officio to refer the matter to the Land Registrar again.

20. In the circumstances, I find the Notice of Motion application dated the Notice of Motion dated 23<sup>rd</sup> May 2024 unmerited and will dismiss it with costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Sheila Sakoma for Ndungu Njoroge and Kwach for Plaintiff/ Respondent

Gachoka for Applicant

Court Assistant: Joan

