



REPUBLIC OF KENYA



Maritim & 5 others v Samoei & 4 others (Environment and Land Case E053 of 2022) [2025] KEELC 7071 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7071 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E053 OF 2022**

CK YANO, J

OCTOBER 16, 2025

BETWEEN

PHILIP K MARITIM 1ST PLAINTIFF
KIPKURGAT KIBOR KIBIEGO 2ND PLAINTIFF
ROBERT KIPKEMEI KETER 3RD PLAINTIFF
JOHN KIPKEMBOI CHUMBA 4TH PLAINTIFF
WILLIAM KIPNGETICH BITOK 5TH PLAINTIFF
EDNA JEPLETING 6TH PLAINTIFF

AND

PAUL KIRWA SAMOEI 1ST DEFENDANT
TAMAR CHEPTOO BIRGEN 2ND DEFENDANT
JULIUS KIPKOSGEI 3RD DEFENDANT
COUNTY LAND REGISTRAR, UASIN GISHU 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This is a ruling in respect of the Notice of Motion dated 2nd April, 2025 in which the 1st, 3rd and 5th Defendants/Applicants seek the following orders:
 - a. The Honourable Court be pleased to review and set aside ruling dated 27/03/2025.
 - b. Costs be in the cause.



2. The application is based on the grounds set out thereon and supported by the affidavit of even date sworn by Tamar Cheptoo Birgen, the 2nd Defendant/Applicant. The Applicants' case is that on 27th March, 2025, the court made a ruling dismissing their Application for contempt dated 23rd January, 2025. That the reason for the dismissal was that the 3rd and 5th Plaintiffs, as well as Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei were not aware of the ruling.
3. The Applicants contend that this is however not true as the said parties were on national television on 17th January, 2024 faulting the Court's decision and forcefully taking possession. That for this reason, the said parties were aware of the subject ruling and it is only fair that the ruling of 27th March, 2025 be set aside. They thus asked the court to review the orders issued on 27th March, 2025 in the interests of justice.
4. The Application was served on the Plaintiffs/Respondents' Advocates and also on Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei on 15th April, 2025. An Affidavit of Service dated 2nd May, 2025 sworn by Morris Atila, a licensed Court Process Server was filed to that effect.
5. The Respondents did not file any response to the Application. The court directed that the Application be canvassed by way of written submissions. The Applicants filed their submissions dated 8th July, 2025 in support of the Application. The Respondents later filed submissions dated 23rd September, 2025 opposing the Application.

Submissions:

1st 2nd and 3rd Defendants/Applicants' Submissions;

6. In the submissions, Counsel for the Applicants submitted that Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules lay down the law on review of court orders, and that they grant the court unfettered discretion to make such order as it thinks on review. He cited Republic vs Procurement Administrative Review Board & 2 Others (2018) eKLR, Sarder Mohamed vs Charan Singh Nand Singh and Another (1959) EA 793, Ajit Kumar Rath vs State of Orisa & Others, 9 Supreme Court Cases 596 at page 608, Tokesi Mambili and Others vs Simion Litsanga [2004] eKLR.
7. Counsel for the Applicants further submitted that where the application is based on sufficient reason, it is for the court to exercise discretion. He cited the case of Republic vs Advocates Disciplinary Tribunal Ex Parte Apollo Mboya (2019) eKLR High Court Nairobi Judicial Review Division Misc. Application No. 317 of 2018 on the principles to be applied when a court is considering an application for review.
8. Counsel argued that the 1st, 3rd and 5th Defendants had proved that the 3rd Plaintiff, 5th Plaintiff, Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemboi were aware of the ruling. He submitted that faulting the decision of the court on national television, means that they were aware of the decision they were faulting. He submitted that the Applicants had met the grounds for review and asked the court to grant the said prayer.

Plaintiffs'/Respondents' Submissions;

9. In the Plaintiffs'/Respondents' submissions, Counsel placed reliance on the principles set out at Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, which were enumerated in Republic vs Public Procurement Board (Supra). He submitted that an applicant must strictly prove the grounds set out under Order 45 Rule and the court's discretion exercised judiciously (Muyodi vs Industrial and Commercial Development Corporation & Another (2006) 1 EA 243 and Tokesi Mambili and Others vs Simion Litsanga (Supra)).



10. Counsel explained that review is concerned with evidence which existed at the time of the ruling but which despite due diligence, was not within the Applicants' knowledge. Counsel argued that the Applicants had not met the threshold for review since the television broadcast relied on does not qualify as discovery of new and important evidence under Order 45. He argued that the Defendants have not shown that the evidence was not within their knowledge, or could not be obtained with due diligence at the time of the contempt application. He relied on *Pancras T. Swati vs Kenya Breweries Ltd (2014) eKLR* cited in *Francis Origo & Jacob Kumali Mugala*.
11. With regard to error apparent on the face of the record, Counsel further submitted that such an error must be self-evident and not require elaborate reasoning. He relied on *National Bank of Kenya Limited vs Ndungu Njau (1996) KLR 469*. Counsel argued that the allegation that the Plaintiffs and other persons were aware of the ruling and disobeyed it is one that requires evidence and argument, and cannot thus be termed an error on the face of the record. He argued that the Applicants dissatisfaction with the decision of the court is a ground for appeal, not review.
12. Counsel submitted that as regards the ground of sufficient reason, it must be analogous to the other grounds and cannot be based on mere dissatisfaction with the judgment. Counsel asserted that the Applicants had thus failed to establish any sufficient reason within the meaning of Order 45 Rule 1. He termed the present application an appeal disguised as review. He asked the court to find that the Applicants have failed to satisfy the requirements of review. He further urged the court to uphold the ruling of 27th March, 2025 and dismiss the instant application with costs.

Analysis and Determination:

13. I have considered the Application herein, the affidavit filed in support and the submissions filed on behalf of the respective parties herein. The only issue for determination is whether this court should review and set aside the ruling delivered on 27th March, 2025.
14. The law governing review of court orders is Section 80 of the *Civil Procedure Act*, as read with Order 45 Rule 1 of the Rules thereunder. For the avoidance of doubt, Section 80, which is the substantive law, provides that:

80. Review

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.

15. On the procedure, Order 45 Rule 1 of the Civil Procedure Rules provides that:-

1. Application for review of decree or order [Order 45, rule 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.

16. In an application for review, it is particularly necessary that the application should disclose in the body of the notice of motion the ground or grounds on which the review is being sought. In this instance, the Applicants have stated on the face of the Motion and in their submissions that their application is based on the ground of sufficient reason.
17. From the record, the Applicants herein moved the court by way of a Notice of motion application dated 23rd January, 2025 claiming that the 3rd Plaintiff, 5th Plaintiff, Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei were in contempt of court. They claimed that the said parties had deliberately, wilfully and persistently acted in defiant disobedience of the ruling of Honourable court made on 19th January, 2023.
18. The application was determined vide a ruling delivered on 27th March, 2025 which dismissed the application for contempt. The Applicants have now approached this court seeking review of the ruling of the court delivered on 27th March, 2025. They claim that the court dismissed their application for reason that the alleged contemnors had no knowledge of the ruling they were alleged to have disobeyed.
19. In the instant application, the Applicants claim that the alleged contemnors were in fact aware of the ruling. Per the Applicants, the Respondents were on national television on 17th January, 2024 faulting the Court's decision and forcefully taking possession. For this reason, they seek to have the ruling of 27th March, 2025 reviewed.
20. I note that at paragraph 4 and 5 of the Affidavit of Tamar Cheptoo Birgen dated 23rd January, 2025 which was sworn in support of the Application for Contempt, it was deponed that:-
 - “ 4. That the 3rd Plaintiff, 5th Plaintiff, Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei are aware of the said ruling because on 17th January 2024 they went and forcefully evicted the Applicants herein without any cause.
 5. That furthermore 3rd Plaintiff, 5th Plaintiff, Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei went to the media and mislead (sic) the public claiming that the said parcel belonged to the Plaintiffs without having appealed the decision by the honourable court.”
21. For the record, the Applicants did not reveal to this court the content of the televised broadcast relied on in this application. Notably, even in the application for contempt, they also did not reveal the alleged misleading information given to the media. It is thus not clear whether it was the same event or constitutes two different transactions. It is not the court's duty to collect and/or present evidence in support of a party's case.
22. However, going by the Applicants' own averments in this application, the Respondents went on television on the same day they evicted them. Equally, in the application for contempt, the Applicants deponed that they were forcefully evicted from the land on 17th January, 2024 the same day as the alleged television broadcast by the Respondents. Without evidence to the contrary, the only conclusion that can be reached is that they are referring to the same event as they did in their earlier application for contempt.



23. Therefore, the fact that the Respondents approached the media on 17th January, 2024 was evidently already known by the Applicants at the time of the Application for contempt and was brought to the attention of this court. Being aware of that fact, in its ruling of 27th March, 2025 this court made the following finding:-

“ 10. ... On 19th January, 2023, the court (Obaga, J) found that the plaintiffs (now Respondents) said application dated 11th October, 2022 was devoid of merit and dismissed the same with costs to the Respondents (now some of the Applicants in the present application). I have perused the court record and note that the said ruling was delivered virtually in the presence of Mr. Warigi for the 1st to 3rd Defendants. There is no indication that the Respondents were present in person or through their advocate.

11. From the material on record, this court is not in a position to tell whether counsel for the Applicants herein notified the respondents of the outcome of the said ruling. More importantly, there were no positive orders that were issued by the court in the said ruling, save for costs. This is because all that the court found was that the application dated 11th October, 2022 was devoid of merit and dismissed the same with costs. There is no mention of any orders directed to the Respondents herein asking them to do or refrain from doing any of the acts complained herein. If anything, they were awarded costs of the said application.”

24. While the court did address the issue of knowledge of the orders of the court by the Respondents, it also made the finding that there was no order issued on 19th January, 2023 forbidding the Respondents from doing any act or directing them to do a certain act. It is therefore misleading for the Applicants to allege that the application for contempt failed only for lack of knowledge of the orders. In effect, since there was no injunction issued, there were no orders in place barring the Respondents from acting as they did on the land, and from the above extract of the court’s decision, the application for contempt would have failed anyway.

25. Even if the court were to consider the other grounds for review, on the ground of discovery of new and important matter or evidence, the qualifier under Order 45 Rule 1 is that it should be such evidence which was not in the Applicants’ knowledge. It must also be shown that it could not be obtained and/or produced at the time when the order was made even after the exercise of due diligence. The alleged television broadcast of 17th January, 2024 where the Respondents are purported to have faulted the court’s decision was already within the Applicants’ knowledge at the time of the application for contempt.

26. The only other ground for review of an order or decree is on account of some mistake or an error apparent on the face of the record. Discussing the ground of error apparent on the face of the record, the Court of Appeal in *National Bank of Kenya Limited vs Ndungu Njau* (1997) KECA 71 (KLR) held 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...”



27. See also the case of *Nyamogo & Nyamogo vs Kogo* (2001) EA 170, where the court held as follows:-

“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.”

28. The issue of whether or not the alleged contemnors were aware of the existence of any orders of this court is one requiring evidence and elaborate argument to determine. That being the case, it cannot qualify as an error apparent on the face of the record.
29. Order 45 Rule 1 lays down the guiding principles that courts ought to consider when deciding an application for review. It is true that the discretion donated to the court under Section 80 of the *Civil Procedure Act* to review its own decisions is unfettered. However, for this discretion to be exercised in favour of a party seeking review, the application must be premised on the grounds specified under Order 45 of the Civil Procedure Rules. This is not the case herein.
30. From the foregoing, it is apparent that the Applicants failed to show that they have discovered new evidence that was not available to them at the time of the hearing of the Application for Contempt, or that there is any error apparent on the face of the record. In addition, despite their assertions to the contrary, they have not established that there is any sufficient cause to warrant the order for review sought in their application. It follows therefore, that they did not meet the threshold for review and setting aside of the ruling delivered on 27th March, 2025.
31. Courts have held time and again that a point which may be a good ground of appeal may not be a good ground for review. In this regard, I must say that the Applicants clearly do not agree with the ruling of this court delivered on 27th March, 2025. That being the case, they ought to have lodged an appeal instead of this application.
32. Furthermore, it is clear that the information the Applicants seek to rely on in this application was already presented to the court at the time of the previous ruling. Bearing that in mind, I am of the view that allowing the application for review in this instance for the reasons given by the Applicants, will have this court sitting on appeal on its own decision, for which it has no jurisdiction.

Orders:

33. Consequently, the following orders hereby issue: -
- a. The 1st, 3rd and 5th Defendants/Applicants Notice of Motion dated 2nd April, 2025 lacks merit, and the same is hereby dismissed.
 - b. The Applicants shall bear the costs of this application.
34. Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 16TH DAY OF OCTOBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the virtual presence of;

Mr. Sambu for Plaintiffs/Respondents.

Mr. Kapere holding brief for Mr. Warigi for 1st, 3rd and 5th Defendants/Applicants.

No appearance for 2nd and 4th Defendants.

Court Assistant - Laban.

