



**Mwangi & another v Muiga (Environment and Land Case  
E016 of 2024) [2025] KEELC 6818 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6818 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND CASE E016 OF 2024**

**JM KAMAU, J**

**OCTOBER 9, 2025**

**BETWEEN**

**MOSES KAMAU MWANGI ..... 1<sup>ST</sup> PLAINTIFF**

**SILAS MURIITHI MWANGI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MARY WANGUI MUIGA ..... DEFENDANT**

**RULING**

1. In the Application dated 26/5/2025 the Plaintiff prays for the following substantive orders: -
  1. That this court may be pleased to reinstate the suit herein which was struck out on the 23/5/2025 and the matter be heard again on merit.
  2. That the court may be pleased to review the Ruling delivered on 23/5/2025 and the matter be heard again on merit.
2. The grounds upon which the Application is made are that the Ruling did not consider 3 Acres the Respondent and his entire family has illegally occupied on the Applicant's parcel of land L.R No NYERI/Endarasha/1559, that the issue before the Court was not a boundary dispute but trespass upon a private land contrary to Article 64(a) of *the Constitution* of Kenya, 2010.
3. In the Replying Affidavit sworn on 4/7/2025, the Respondent says that there is no discovery of new and important matter or evidence which was not within the knowledge of the Applicants or could not be produced by him at the time the Decree was passed or order made.
4. The Applicant does not disclose any new discovery with the ambit of Order 45 Rule 1 of the Civil Procedure Rules and the matters delved in by the Applicants are a preserve of the Court of Appeal after this Court had rendered its Decision on the matter. She also depones that this Court is now fuctus officio and cannot sit on Appeal of its own Decision since the matters raised herein go into the merits



of the Ruling delivered. Finally, the annexures relied upon in this Application were in the Defendant's counter-claim that was struck out on 23/5/2025. Further, the supplementary Affidavit christened as answer to the Reply Affidavit does not raise any new matters save what is in the Affidavit in support of the Application sworn on 26/5/2025.

5. After the written submissions were filed, I looked at them before writing this Ruling. The point of departure is paragraphs 12 – 16 (inclusive) of the Ruling dated 23/5/2025 set out as follows:-

12. Arising from the foregoing, it was clear to me that despite the manner in which the Plaintiffs had framed the suit, it was nothing but a boundary dispute.

13. As the Court of Appeal stated in *Azzuri Limited -vs- Pink Properties* (2018) eKLR:

“..... boundary disputes pertaining to lands falling within general boundary areas must be referred to the Land Registrar for resolution; while disputes pertaining to lands with fixed boundaries may be investigated and possibly resolved simply through a surveyor... From this analysis of the law, it should be clear from the above that, we are in agreement with the Learned Judge's conclusion that the dispute ought to have been heard by the Land Registrar as stated in the statute. Jurisdiction is everything. It has been said many times before, that, without it, a court has no power to make one more step, irrespective of the strength and nature of evidence in the parties' possession .....”

14. In the circumstances herein, I was persuaded that the dispute herein falls under the purview of Sections 18(2) and 19 of the *Land Registration Act* and this Court will not confer upon itself jurisdiction to determine a boundary dispute.

15. Since the Defendant had filed a counterclaim against the Plaintiffs based on the same set of facts, it is my finding that the suit and the Counterclaim cannot lie.

16. In the premises I hereby strike out both the Plaint dated 9th August, 2024 as well as the Defendant's Counterclaim dated 19th November, 2024. ”

6. To begin with, prayer No. 1 is not sustainable. This suit cannot be reinstated. The same was struck out not because the same was not heard but because both the main suit as well as the counterclaim were found to be in the wrong place. You only reinstate a suit mainly for that either party or both were not heard and where the merits of the case were not considered. This is not the case here. By striking out the suit and not dismissing it was a way of telling the parties to go to the right Court.

7. As to Review, Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -

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.”

8. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

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.”

9. In Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR it was held: -

Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds;

- (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- (b) on account of some mistake or error apparent on the face of the record, or
- (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

10. In Pancras T. Swai v Kenya Breweries Limited [2014] eKLR the Court of Appeal held that: -

Order 44 rule 1 (now Order 45 Rule 1 of the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.....”

11. In Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793 the High Court held that Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.

12. Discussing the scope of review, the Supreme Court of India in the case of Ajit Kumar Rath vs State of Orisa & Others , 9 Supreme Court Cases 596 at Page 608. had this to say:-

.....the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” ..... means a reason sufficiently analogous to those specified in the rule”

13. In Tokesi Mambili and others vs Simion Litsanga the Court held as follows:-



- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
  - ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.
14. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018 John M. Mativo Judge culled out the following principles from a number of authorities:-
- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
  - ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
  - iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
  - iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
  - v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
  - vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
  - vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
  - viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
  - ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
  - x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
15. The case here is that of docking in a Court that has no jurisdiction and not one of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Plaintiffs' knowledge.



16. The Application could also not pass the Test of:

..... or for any other sufficient reason.....”

which reasons leading authorities hold must be analogous to the other grounds mentioned under the Act and rules , a reason sufficiently analogous to those specified in the rule”

17. In the case of Evan Bwire V Andrew Aginda Civil Appeal No. 147 of 2006 cited in the case of Stephen Githua Kimani V Nancy Wanjira Waruingi T/A Providence Auctioneers (2016) eKLR the Court of Appeal held as follows:

An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence.”

18. The current Application falls offends the above. The effect of allowing it would amount to re-opening the case afresh. Litigation must come to an end.

19. Finally, the Application is irregularly in Court since an Applicant in an Application for Review ought to have annexed a formal extracted Decree or order in respect of which the review is sought.

20. In the case of Suleiman Murunga V Nilestar Holdings Limited & Another (2015) eKLR the court held as follows:

The plain reading of the above provision (referring to Order 45 Rule 1) is that an applicant for review ought to have annexed a formal extracted Decree or order in respect of which the review is sought. In essence, judgment or ruling. Thus, where an applicant fails to annex the order sought to be reviewed, an application is defective. In the present application the order that the Defendants sought to be reviewed was not annexed with the result that the Defendant’s application was fatally defective. I agree that a formal decree or order is a pre-requisite before an applicant can bring himself/herself within the ambit of order 45 of the Civil Procedure Rules as relates to review of the decree or order”

21. No such a Decree was attached to the present Application which makes the Application fatally defective.

22. A case such as in this cannot be reviewed by the same Court which had adjudicated upon it. If that is done it would set a very unsustainable precedence.

23. When the Applicant felt that the Court was wrong in dismissing his claim, the only recourse he had was to move to the next Court by way of appeal. He failed to do so.

24. Having said so, the remaining duty is to dismiss the Applicant’s Application dated 26/5/2025 with costs. It is so ordered.

**JUDGMENT DATED AND DELIVERED AT NYANDARUA VIRTUALLY THIS 9TH DAY OF OCTOBER 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant:



Plaintiff's Counsel – N/A.

Defendants' Counsel – Ms. Muchai.

