



**Muriithi v Gaciri (Civil Application E003 of 2023)
[2025] KEELC 6592 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
CIVIL APPLICATION E003 OF 2023
JM MUTUNGI, J
OCTOBER 2, 2025**

BETWEEN

EVANS GITARI MURIITHI APPLICANT

AND

JOSPHAT MURIITHI GACIRI RESPONDENT

RULING

1. The Applicant by a Notice of Motion application dated 31st July 2023 prays for orders as follows:-
 - a. The Honourable Court be pleased to recall the Lower Court file for Kerugoya CMCC No. 170 of 2012 and the Judgment delivered on 6th April 2021 for purposes of exercising its supervisory jurisdiction and review or interrogate the correctness of the orders issued and make any appropriate orders/directions to ensure fair administration of justice.
 - b. The Honourable Court be pleased to grant such other orders or further relief as it may deem fit and necessary in the circumstances.
 - c. The Costs of this application be provided for.
2. The application is premised on the grounds set out in the body of the application and the Supporting Affidavit sworn by Evans Gitari Muriithi, the Applicant on 31st July, 2023.
3. The brief facts are that the Applicant and the Respondent were parties in Kerugoya CMCC No. 170 of 2012 the Applicant as the Plaintiff and Respondent as the Defendant. In the suit, the Applicant had sued the Respondent seeking the Respondent's eviction from land parcel Baragwe/Guama/1968. The Respondent in the suit filed a Counterclaim praying for an order of injunction against the Applicant apparently on the basis that he (Respondent) had a registered lease over the suit property that had not expired. The suit before the Magistrates Court was fixed for hearing by the Applicant's Advocates *ex parte* and he served the Respondent's Advocate but failed to attend Court on the date



fixed for hearing but Counsel for Respondent and the Respondent appeared. On application by the Respondent, the Applicants suit was dismissed and the Respondent was permitted to proceed with the hearing of the Counterclaim *ex parte*. Judgment in the suit was delivered on 6th April 2021 in favour of the Respondent. An application by the Applicant to set aside the Judgment was dismissed by the Chief Magistrate's Court on 18th August 2022.

4. It is against the foregoing background the Applicant has filed the present application urging the Court to exercise its supervisory jurisdiction under Article 165 (6) and (7) of *the Constitution*. The Respondent in opposition to the application filed a Replying Affidavit sworn on 18th September 2023. The Respondent averred that he entered into a lease agreement with the initial owner of the suit land, one Jamleck Gitari Nyaga for a term of 30 years from 14th February 2002 to 13/2/2023. The Respondent averred that he obtained a Prohibitory Order on the basis of the lease which he registered against the title of the land which though irregularly lifted by an order of the Court was reinstated and remains in force. The Respondent asserts there can be no basis for the Applicant to seek a review of the Judgment when he is the one who has failed to comply with the Court order requiring him to allow the Respondent to have use of the suit land for the balance of the lease term.
5. The Respondent further through his Advocates Govi Ombongi & Company Advocates filed a Notice of Preliminary Objection dated 24th March 2025 where he raised the following ground:-
 1. That the application offends the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 & 2 of the *Civil Procedure Rules*, 2020 and is therefore a non-starter, bad in law and an abuse of the Court process.
6. The parties canvassed the application by way of Written Submissions. The Applicant's submissions were dated 28th April 2025 while those of the Respondent were dated 5th May 2025. I have reviewed and considered the submissions made on behalf of the parties.
7. Quite evidently the Applicant does not predicate his application on the provisions for review of decrees and orders under Order 45 Rule (1) & (2) of the *Civil Procedure Rules* or Section 80 of the *Civil Procedure Act*, Cap 21 Laws of Kenya. The Applicant has pegged his application under Article 165 (6) and (7) of *the Constitution*. The application cannot be described as one that would fall under Section 4 of the *Fair Administrative Action Act*, 2015. The *Fair Administrative Action Act*, 2015 was enacted to give effect to Article 47 of *the Constitution*, and for connected purposes. Essentially, the invocation of the *Fair Administrative Action Act* is for the Court to play an oversight role in respect of any quasi-Judicial bodies exercising adjudicative functions to check on the propriety of the decisions they make and ensure they observe procedural fairness so that arbitrary, irrational, illegal and unlawful decisions are not allowed to stand. The process of Judicial Review serves to interrogate how such adjudicative bodies carry out their functions and to intervene whenever it is necessary to do so.
8. In the instant case the Chief Magistrate's Court in making the decision that it did was exercising a Judicial function. A Judgment was rendered by the Chief Magistrate though the Judgment was *ex parte*, since the Applicant did not participate during the hearing as he did not attend Court. The record indicates, it was the Applicant's Advocate who actually took the hearing date and served the Respondent's Advocate with a hearing notice. The Advocate was the agent of the Applicant and hence the Applicant was deemed to have been aware of the hearing date. Consequently, the Learned Magistrate properly exercised his discretion rightly to dismiss the Applicants case on application and to allow the hearing of the Counterclaim to proceed *ex parte*.



9. The Applicant's application to set aside the *ex parte* Judgment was refused by the Learned Trial Magistrate. Following the refusal to set aside the Judgment, the available option by the Applicant was to lodge an Appeal against the refusal to set aside the Judgment which the Applicant did not do.
10. Article 165(6) and (7) under which the Applicant has brought his application provides as follows:
 - (6) The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a Judicial or quasi-Judicial function, but not over a Superior Court.
 - (7) For the purpose of clause (6), the High Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the Fair Administration of Justice.
11. I do not perceive the above provisions as giving the Superior Courts unfettered right to call for any Subordinate Court file in the guise of exercising supervisory jurisdiction. My view is that where there have been regular proceedings before the Subordinate Court the Superior Court ought not to interfere otherwise than through the appropriate Appellate process. Unless there is demonstrable unlawful or illegal process and/or wanton arbitrariness, the Superior Court should not in the name of exercising supervision interfere and should permit the processes to take their natural course. It does appear, the only avenue available in the Civil process to supervise the subordinate Courts is through the procedure of Judicial Review proceedings through which the actions and/or decisions of the subordinate Courts can be interrogated by the Superior Court to determine their propriety or otherwise.
12. In the instant matter the Applicant merely appears to have been dissatisfied with the decision that the Chief Magistrate made in favour of the Respondent. He had the right to appeal against the dismissal of his application to set aside the Judgment which he did not exercise.

I do not consider invoking the Supervisory mandate of the Court to overcome the shortcoming was the appropriate option for him to do.
13. I find no merit in the application dated 31st July 2023 and I dismiss the same with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 2ND DAY OF OCTOBER 2025.

J. M. MUTUNGI

ELC - JUDGE

