



**Nyaku Limited v Office Suites Developers Limited; Gheewala  
& another (Interested Parties) (Environment and Land Case  
E166 of 2025) [2025] KEELC 6794 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6794 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E166 OF 2025  
CG MBOGO, J  
OCTOBER 7, 2025**

**BETWEEN**

**NYAKU LIMITED ..... PLAINTIFF**

**AND**

**OFFICE SUITES DEVELOPERS LIMITED ..... DEFENDANT**

**AND**

**SHRIKESH GHEEWALA ..... INTERESTED PARTY**

**MUKTA CHANDRAKANT GHEEWALA ..... INTERESTED PARTY**

**RULING**

1. Before this court for determination is the notice of motion dated 8<sup>th</sup> July, 2025 filed by the plaintiff/applicant and it is expressed to be brought under Articles 47(1) and (2), 48,50(1) and 159 (2)(d) of *the Constitution*, Sections 1A,1B, 3,3A, 80 and 63(c) of the *Civil Procedure Act* and Order 12 Rule 7, Order 42 Rule 6(1) and Order 45 Rule 1 of the Civil Procedure Rules seeking the following orders: -
  1. Spent.
  2. That there be a stay of execution of the orders issued by this honourable court on 3<sup>rd</sup> July 2025 allowing the 1<sup>st</sup> and 2<sup>nd</sup> interested parties applications dated 5<sup>th</sup> May, 2025 and 12<sup>th</sup> May, 2025.
  3. That there be a review of the orders issued by this honourable court on 3<sup>rd</sup> July 2025 allowing the 1<sup>st</sup> and 2<sup>nd</sup> interested parties applications dated 5<sup>th</sup> May, 2025 and 12<sup>th</sup> May, 2025.



4. That there be a stay of proceedings in the overall suit being Milimani ELCLC No. E166 of 2025 Nyaku Ltd v Office suites Developers Ltd pending the hearing and determination of this application.
  5. That there be an order issued by this honourable court allowing the 1<sup>st</sup> and 2<sup>nd</sup> interested parties application dated 5<sup>th</sup> May 2025 and 12<sup>th</sup> May 2025 respectively to be heard and determined on merit.
  6. That there be a stay of proceedings in the overall suit being Milimani ELCLC No. E166 of 2025 Nyaku Ltd v Office Suites Developers Ltd pending the hearing and determination of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties' applications dated 5<sup>th</sup> May, 2025 and 12<sup>th</sup> May 2025 respectively.
  7. That this honourable court be pleased to allow for the plaintiff to file the draft replying affidavits attached to this application in response to the 1<sup>st</sup> and 2<sup>nd</sup> interested parties' applications dated 5<sup>th</sup> May 2025 and 12<sup>th</sup> May, 2025 respectively.
  8. That the main suit struck out by virtue of prayer number 3 of the 1<sup>st</sup> interested parties application dated 5<sup>th</sup> May, 2025 be hereby reinstated and be determined on merit.
  9. Costs for this application be provided for in any event.
2. The application is premised on the grounds on its face, and further supported by the affidavit of Eleshkumar Chandrakant Gheewala, the director of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that on 3<sup>rd</sup> July, 2025 when the matter came up for direction of the 1<sup>st</sup> interested party's application dated 5<sup>th</sup> May, 2025, the court allowed the said application without giving them a chance to file its response on the said application. Further, that prior to this, there were no orders giving directions on the timelines to the said application which is a grave miscarriage of justice.
  3. With regard to the 2<sup>nd</sup> interested party's application dated 12<sup>th</sup> May, 2025 the plaintiff/applicant deposed that the prayer for joinder was ridiculous as he was not a party from the start. It was deposed that the failure in filing its response was that the plaintiff/applicant did not wish for two courts of similar jurisdiction to weigh in on the same facts, and come to different conclusions altogether. Further, that by a ruling delivered by the high court on 3<sup>rd</sup> February 2024, the 2<sup>nd</sup> interested party was barred from interfering with the internal management of the plaintiff/applicant and its assets.
  4. The defendant filed its replying affidavit sworn on 25<sup>th</sup> July, 2025 by Emran Sirmukh Khosla. The defendant did not oppose the joinder of the interested parties in the suit as they are a shareholder and director of the plaintiff/applicant. It was deposed that the plaintiff/applicant has not demonstrated substantial loss to be suffered should the court fail to grant an order of stay of execution. The defendant reiterated that the suit is misconceived as it is not in occupation of the suit property, and that it is clear that the case against it is one of misjoinder of parties.
  5. The 1<sup>st</sup> interested party filed his replying affidavit sworn on 25<sup>th</sup> July, 2025. He deposed that the court issued the said orders after it was satisfied that the plaintiff/applicant had been properly served but had failed to respond in time. He deposed that the orders were made regularly, lawfully and procedurally. Further, that the plaintiff/applicant has failed to meet the threshold for review, and instead is challenging the correctness of the court's interpretation of facts and law which can be



- determined through an appeal. He deposed that the plaintiff/applicant has not disputed service, and the fact that it took no steps to challenge both applications.
6. The 1<sup>st</sup> interested party deposed that the failure by the plaintiff/applicant to act in the face of clear statutory timelines and requirements despite legal representation cannot be cured by feigning ignorance or procedural technicalities at this stage. It was deposed that the suit was rightly struck out, and further that the plaintiff/applicant has failed to satisfy the conditions of stay of execution as set out under the Civil Procedure Rules.
  7. The application was further opposed vide the replying affidavit of the 2<sup>nd</sup> interested party sworn on 30<sup>th</sup> July, 2025. The 2<sup>nd</sup> interested party deposed that when this matter came up on 3<sup>rd</sup> July 2025, the plaintiff/applicant had not filed any response to the two applications, and the court proceeded to allow their joinder and the suit stood struck out against the defendant. Further, that notwithstanding the fact that her advocates erroneously used the word enjoinder instead of joinder, it was unequivocal that the purpose of her application was to be added as a party to the suit.
  8. It was further deposed that given the fact that prayer 3 of the 1<sup>st</sup> interested party's application was not granted *ex parte*, but in the presence of the plaintiff/applicant's advocate, there was no good reasons for failure to file their response. Further, that the plaintiff/applicant cannot seek a review but file an appeal. The 2<sup>nd</sup> interested party deposed that the application does not meet the threshold for review under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. She deposed that the prayers sought in the application cannot issue for the reason that the suit has been struck out, and that there is no basis to reinstate the suit.
  9. The 2<sup>nd</sup> interested party further deposed that there is no explanation for the inordinate delay in responding to the application and the instant application is baseless and misconceived.
  10. The application was canvassed by way of written submissions. The plaintiff/applicant filed its written submissions dated 4<sup>th</sup> August, 2025 where it raised three issues for determination as follows: -
    1. Was there an error apparent on the record that would allow for the orders issued on 3<sup>rd</sup> July, 2025 to be reviewed.
    2. If there was an error apparent on the record, what is the next cause of action.
    3. Costs.
  11. On the first issue, and while relying on the cases of *National Bank of Kenya Ltd v Ndungu Njau* Civil Appeal No. 211 of 1996 [eKLR], *Paul Mwaniki v National Hospital Insurance Fund Board of Management* [2020] eKLR, *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR, *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR, and *In re Estate of Barasa Kanenje Many (deceased) (Succession Cause 263 of 2002)* [2020] KEHC 1 (KLR) (30 July 2020) (Ruling), the plaintiff/applicant submitted that the court never issued any orders in respect to the 1<sup>st</sup> interested party's motion dated 5<sup>th</sup> May, 2025 for the reason of joinder. Further, that the 1<sup>st</sup> interested party fails to point out any order issued as to his application. The plaintiff/applicant submitted that the terms join and enjoin have two distinct meanings and should not be interpreted to mean the same thing.
  12. The plaintiff/applicant further submitted that the parties are bound by their own pleadings, and the 2<sup>nd</sup> interested party cannot wish to amend prayers in her own application by stating that she meant a different word. For this reason, there was an error apparent on the face of record.



13. On the second and third issues, the plaintiff/applicant submitted that the application ought to be allowed as prayed with costs.
14. The defendant filed its written submissions dated 19<sup>th</sup> August, 2025 where it raised three issues for determination as listed below: -
  - a. Whether the joinder of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties was proper and merited.
  - b. Whether the court should grant the orders sought by the applicant.
  - c. Who should bear the costs of this application.
15. On the first issue, the defendant submitted that from the applicant's CR12, it is clear that the interested parties are a shareholder and director of the plaintiff/applicant who are necessary parties in the determination of this suit as any order will directly affect them. The defendant relied on the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] eKLR, and *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* [2014] eKLR, and submitted that the court was properly guided in allowing the joinder of the interested parties.
16. On the second and third issues, the defendant submitted that for the court to set aside *ex parte* orders there must be sufficient reasons to do so. Reliance was placed in the cases of *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR and *Parliamentary Service Commission v Martin Nyaga Wambora & others* [2018] eKLR. The defendant further submitted that the plaintiff/applicant has not demonstrated substantial loss to be suffered, and neither has it satisfied the parameters under Order 45 Rule 1 of the Civil Procedure Rules. In conclusion, the defendant submitted that the application should be dismissed with costs.
17. The 1<sup>st</sup> interested party filed his written submissions dated 26<sup>th</sup> August, 2025 where he raised three issues for determination as follows: -
  - a. Whether the plaintiff/applicant has satisfied the legal threshold for review under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
  - b. Whether the plaintiff/applicant is entitled to stay of the orders of 3<sup>rd</sup> July 2025.
  - c. Who should bear the costs of this application.
18. On the first issue, the 1<sup>st</sup> interested party submitted that from the grounds relied upon in the application, it is clear that the applicant is not seeking review, but it is an attempt to sneak in an appeal under the guise of review and he relied on the case of *Republic v Cabinet Secretary for Interior and Co-ordination of National Government Ex parte Abulahi Said Said* [2019] eKLR.
19. While further relying on the case of *Gitonga v Njuguna & another* (Petition E010 of 2024) [2025] eKLR and *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR, the 1<sup>st</sup> interested party submitted that the ground that his application was allowed without proper directions on times is not an error apparent on the face of the record, and neither does it reveal an unambiguous mistake. Further, he submitted that non-compliance with the clear procedural timelines provided under Order 51 Rule 14 of the Civil Procedure Rules cannot be cured by feigning ignorance or procedural technicalities. Further reliance was placed in the case of *National Bank of Kenya Limited v Ndungu Njau* (Civil Appeal No. 211 of 1996(unreported)).



20. On the second and third issues, the 1<sup>st</sup> interested party submitted the plaintiff/applicant has not proven substantial loss pursuant to Order 42 Rule 6 that it might suffer should the orders be executed. To buttress on this issue, he relied on the cases of James Wangalwa & another v Agnes Naliaka Cheseto [2012] eKLR and Sasenyi Multipurpose Co-operatives Society Ltd v Rukinya Ranching Co. Ltd (Civil Appeal (Application) E010 of 2022) [2024]. In conclusion, the 1<sup>st</sup> interested party submitted that there are no factual reasons to set aside the orders issued on 3<sup>rd</sup> July 2025, and that the application ought to be dismissed with costs.
21. The 2<sup>nd</sup> interested party filed her written submissions dated 11<sup>th</sup> September 2025. The 2<sup>nd</sup> interested party submitted that the orders of 3<sup>rd</sup> July, 2025 allowed for joinder and the striking out of the suit. She submitted that there is no impending threat or likely execution of the orders and there is no execution to be stayed. The 2<sup>nd</sup> interested party submitted that the plaintiff/applicant has not demonstrated loss that will be suffered, and the threshold set out under Order 42 Rule 6 of the Civil Procedure Rules. She relied on the cases of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR Machira T/A Machira & Co. Advocates v East Africa Standard [2002] eKLR and Gianfranco Manenthi & Another v Africa Merchant Assurance Co. Ltd [2019] eKLR.
22. The 2<sup>nd</sup> interested party further submitted that the application fails to identify the alleged error apparent on the face of the record to warrant a review. Reliance was placed in the cases of Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR), and Kishor Kumar Dhanji v Ndeffo Limited & 4 Others [2011] eKLR. The 2<sup>nd</sup> interested party further submitted that the contention that the application dated 12<sup>th</sup> May 2025 was defective for seeking to be enjoined and not joined has no basis since the intention was clear. To buttress on this issue, she relied on the cases of John Musili Mwandia v Mohamed Sharif Chaudhry Nairobi (Milimani) HCCC No. 788 of 1995 and Muganda v Brookside Dairy Limited & 2 Others (Petition E002 of 2025) KEELRC.
23. In conclusion, the 2<sup>nd</sup> interested party submitted that the plaintiff/applicant has not satisfied the threshold for grant of the orders sought and the application ought to be dismissed with costs.
24. I have considered the application, the replies thereof and the written submissions filed by all the parties herein. In my view, the issue for determination is whether the orders of review should issue and who is to bear costs.
25. First and foremost, there is need to clarify a fundamental error that is glaring in the instant application, and which runs through the entire responses that I must deal with as a preliminary concern. The 1<sup>st</sup> interested party filed the notice of motion dated 5<sup>th</sup> May, 2025 seeking the following orders: -
  1. That the application be heard as a matter of priority.
  2. That this honourable court be pleased to join the proposed interested party/ applicant Shrikesh Gheewala as an interested party in this suit.
  3. That the honourable court be pleased to strike out the suit against the defendant for being filled without proper approval from the Board of Directors of the plaintiff and being in contravention of the orders dated 4<sup>th</sup> April 2025 issued by Honourable Lady Justice Njoki Mwangi in HCCOMM E075 of 2024 Mukuta Chandrakant Gheewala, Mamta Gheewala and Shrikesh Gheewala v Eleshkumar Chandrakant Gheewala and Nyacity Limited.



4. That costs of this application be provided for and be borne by Eleshkumar Chandrakant Gheewala.
  5. Any other orders that meet the ends of justice.
26. The 2<sup>nd</sup> interested party filed the notice of motion dated 12<sup>th</sup> May, 2025 seeking the following orders:-
1. That the application be certified urgent and be heard ex-parte in the first instance.
  2. This honourable court be pleased to order that the applicant, Mukta Chandrakant Gheewala be enjoined in the suit herein as an interested party.
  3. That upon prayer no. 2 being granted, the proposed interested party be granted leave to file the necessary and appropriate pleadings, affidavits and/or submissions and to be heard in the proceedings herein.
  4. Any such further orders as this honourable court may deem fit and just to grant in the circumstances of this case.
  5. The costs of this application be provided for.
27. From the record, both applications were served upon the plaintiff/applicant, a fact which has not been denied. When this matter came up on 3<sup>rd</sup> July, 2025 parties were represented by counsel except for the defendant who was absent. The court was duly informed that directions were given on both applications and the time in which to file the responses which was within 14 days. However, the plaintiff/applicant did not file a response and cited that both applications misinterpreted the ruling delivered by the High Court. The learned counsel for the plaintiff/applicant argued that if both applications proceeded, there would be similar orders which was the reason they had not filed any response.
28. This court having considered arguments by the respective parties, noted that both applications i.e. 5<sup>th</sup> May, 2025 and 12<sup>th</sup> May, 2025 were unopposed. With regard to the notice of motion dated 5<sup>th</sup> May, 2025 the court granted prayers 2 and 4 respectively. With regard to the notice of motion dated 12<sup>th</sup> May, 2025 the court granted prayers 2, 3 and 5. Looking at the orders that were granted which arose from both applications, it is clear that there was no order striking out the suit. Therefore, all the parties are mistaken to believe and base arguments on a supposed suit that is said to be non-existent.
29. It would also be necessary to point out that the plaintiff/applicant began by seeking orders of review, stay of execution, stay of proceedings and reinstatement of the suit. However, from the written submissions filed by the plaintiff/applicant it is evident that most of the prayers were abandoned, and instead the main focus is to seek a review the orders of 3<sup>rd</sup> July, 2025.
30. Having said the above, has the plaintiff/applicant provided sufficient to merit review of the orders issued on the said date?
31. Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules provides as follows: -

Section 80.

“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.”

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

“ 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.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

32. From the above provisions, it is clear that while Section 80 of the *Civil Procedure Act* grants the court the power to make orders for review, Order 45 sets out the jurisdiction and scope of review by hinging review to discovery of new and important matters or evidence, mistake or error on the face of the record and any other sufficient reason.

33. In the case of Republic versus Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR, it was held:-

“ 21. The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of appellate jurisdiction, which is not permissible.”



34. In *Muyodi vs. Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, the Court of Appeal described an error apparent on the face of the record as follows:-

“...In *Nyamogo & Nyamogo -vs- 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 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.”

35. In the instant case, the plaintiff/applicant argued that there was an error apparent on the orders of the court to the extent that the 2<sup>nd</sup> interested party was not part of the proceedings and therefore, could not be enjoined in the proceedings. However, I wish not belabor much on this issue for the reason that a plain reading of the application dated 12<sup>th</sup> May, 2025 is clear that the 2<sup>nd</sup> interested party was intent to participate in the proceedings. With regard to the notice of motion dated 5<sup>th</sup> May, 2025 the plaintiff/applicant contended that there were no directions given to the application and thus it was not given a chance to file a response to the same. However, and as the record of the proceedings bear witness, the reasons for failure to file any response was allegedly linked to the ruling that was delivered by the High Court. Was there any error apparent on the face of the record, I find not. The plaintiff/applicant through its counsel was ignorant of due process and opted to have proceedings conducted their way in total disregard of the directions of the court. What would form a ground for opposing both applicants cannot find expression in review, for the reason that the plaintiff/applicant waived its right to respond to the same when the time lapsed and no satisfactory response was forthcoming.

36. From the above, the notice of motion dated 8<sup>th</sup> July, 2025 lacks merit, and it is hereby dismissed. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**07/10/2025.**

**In the presence of:**

Mr. Benson Agunga - Court assistant

Mr. Owiti for the Plaintiff

Mr. Kamau holding brief for Mr. Kimamo Kuria for the 2<sup>nd</sup> Interested Party

Mr. Kisala holding brief for Mr. Kimathi for the 1<sup>st</sup> Interested Party

Ms. Ndung'u holding brief for Mr. Kiptoo for the Defendant

