



Omware v Ndeti (Sued as the Administrator of the Estate of Albert Athanas Makau Kyambo - Deceased); Nzau & another (Intended Interested Party) (Environment and Land Case E001 of 2024) [2025] KEELC 5690 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5690 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E001 OF 2024**

**NA MATHEKA, J
JULY 31, 2025**

BETWEEN

GRACE AKINYI OMWARE PLAINTIFF

AND

**THERESIA MUENI NDETI (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF ALBERT ATHANAS MAKAU KYAMBO - DECEASED) . PLAINTIFF**

AND

**JONATHAN MUSYOKA NZAU INTENDED INTERESTED PARTY
SAADIA ALI ALIO INTENDED INTERESTED PARTY**

RULING

1. The application is dated 4th October 2024 and is brought under order 1 rule 6, Order 22 rule 22, Order 45 rule 1 & 2 of the *Civil Procedure Rules 2010* and Sections 1, 3, 3A & 63(e) of the *Civil Procedure Act* Cap 21 Laws of Kenya seeking the following orders;
 1. That the Application herein be certified urgent and heard on priority basis.
 2. That Honourable Court be pleased to join Saadia Ali Alio as an Interested Party herein.
 3. That the Honourable Court be pleased to grant stay of status quo orders issued herein pending the hearing and determination of this Application.
 4. That this Honourable Court do review and set aside the status quo orders issued herein on 19th September, 2024.
 5. That the Applications dated 13th September, 2024 and 18th September, 2024 be dismissed.



6. That any other order this Honourable Court may deem fit to grant.
 7. That the costs of this Application be provided for.
2. It is grounded upon the annexed affidavit of Saadia Ali Alio and the following grounds that she is the legal owner of LR. No. 12715/11778 having bought the same from Grace Akinyi Omware the Plaintiff herein. That the said LR. No. 12715/11778 was a sub-division from original number 12715/374/20 as is clearly indicated in the title. That LR. No. 12715/374 does not exist and therefore cannot be subject of court matter. That the court lacks jurisdiction to entertain the Defendant Applications for lack of grant of representation. That the Defendant has no locus standi to file the Applications. That there is a mistake or error apparent on the face of record. That there is sufficient reason for the review. That she stands to suffer irreparable loss and damage. That it is in the interest of justice that the orders herein be granted.
 3. The Plaintiff/Respondent submitted that she is not opposed to the joinder as she had subdivided the suit land and sold it to the Applicant and the same was transferred to her on the 18th March 2024.
 4. The 2nd Defendant/Respondent maintains that no lawful subdivision was ever conducted and all sub titles are a product of fraudulent dealings. However, he does not oppose the joinder. That the court should decline the order for review and status quo because the said orders were issued to preserve the subject property because of the unlawful developments and rival ownership claims.
 5. This court has considered the application and the submissions therein. The legal position on joinder of parties is Order 1 Rule 10 (2) of the [Civil Procedure Rules](#) which provides as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
 6. The principles to be considered for joinder of a party were well enumerated in the decision in [Meme vs Republic](#) (2004)1 124, which principles are;
 - a) joinder of a person because his presence will result in the complete settlement of all questions involved in the proceedings,
 - b) joinder to provide a protection of a party who would otherwise be adversely affected in law,
 - c) joinder to prevent a likely course of proliferated litigation.”
 7. The law clearly stipulates that joinder can be made of any party as plaintiff or defendant or as one whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The considerations by the court before allowing a person to be joined in the suit have been stretched to include those who would be adversely affected in law and also to prevent proliferated litigation.
 8. From the pleadings before the court, the intended interested party maintains that she is the legal owner of LR. No. 12715/11778 having bought the same from Grace Akinyi Omware the Plaintiff herein. That the said LR. No. 12715/11778 was a sub-division from original number 12715/374/20 as is



clearly indicated in the title which she attached. That LR. No. 12715/374 does not exist and therefore cannot be subject of court matter. I find that the Applicant produced documentary evidence claiming the suit land. In the circumstances therefore, the said intended interested party is a proper party to be joined in this suit. This is in order for her to defend her interest in the property. Assuming that the court makes adverse orders with regard to the title she holds, then her interest in the land will be affected. It is therefore in their best interest to be joined in the suit. It is also noted that the joinder is not opposed.

9. Her presence in this suit will also ensure that she is accorded a right of hearing by participating in the suit. She will therefore not be condemned unheard. The importance of the right to be heard was articulated in the case of *Mbaki & others vs Macharia & another* (2005) 2 EA 206, at page 210, where the Court stated as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”

10. Further allowing the prayer for joinder will prevent a multiplicity of suits as the questions and issues relating to ownership of the suit will be determined completely. I therefore find that the prayer for joinder is merited.
11. The other issue is whether the applicants have met the threshold for the grant of orders of setting aside and review.
12. Order 45 of the *Civil Procedure Code* sets out the parameters for an application for review. Order 45, Rule 1(b) is clear that for the court to review its decision, certain requirements should be met. This section provides as follows:

“(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.”

13. The aforesaid rule is based on section 80 of the *Civil Procedure Act*, Cap. 21 Laws of Kenya which states 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.”

14. Under Section 80 of the *Civil Procedure Act*, the court has unfettered discretion to make such orders as it thinks fit on sufficient reason being given for review of its decision. However, this discretion should be exercised judiciously and not capriciously. In Court of Appeal, Civil Appeal No. 211 of 1996, *National Bank of Kenya vs Ndungu Njau*, the Court of Appeal 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-evidence and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceed on an incorrect expansion of the law.”

15. It then follows that Order 45 provides for three circumstances under which an order for review can be made. The applicant must demonstrate to the court that there has been 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. Secondly, the applicant must demonstrate to the court that there has some mistake or error apparent on the face of the record. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.

16. In the instant application, the Applicant prays for the setting aside of the orders made on 19th September, 2024 on the grounds that there is an error apparent on the face of the record. According to the Applicants, the error apparent on the face of the record is that the the Defendant has no locus standi to file the Applications. That there is sufficient reason for the review. That she stands to suffer irreparable loss and damage. The Defendant states that the suit land belongs to her late husband and he never sold it. That there is an active investigation at the DCI concerning the matter.

17. It is my considered view that the Applicant has not met the threshold of orders of review. It has not been demonstrated that any error on the face of the record occurred. The 1st Defendant’s interest on the suit land is yet to be established. There is a 2nd Defendant who was enjoined by a ruling dated 25th March 2025 and irreparable loss has not been established. The errors are not self-evident but would require an elaborate argument to be established. This principle was enunciated by the Court of Appeal in *National Bank of Kenya Ltd vs Ndungu Njau* Civil Appeal No. 211 of 1996 (UR) where it held:-

“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.”

18. Similarly in *Paul Mwaniki vs National Hospital Insurance Fund Board of Management* (2020) eKLR the court stated:

“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. It will not be a



sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provisions of law cannot be a ground for review.”

19. The court went on to say;

“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for purposes of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision. The wisdom flowing from jurisprudence on this subject is that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.”

20. Evidently, from the above, it is clear that the error ought to be so glaring that there can possibly be no debate about it. I find that this has not been established and a review cannot be granted. I find that the Application succeeds in part and I grant the following orders;

1. That Saadia Ali Alio be enjoined as an Interested Party herein.
2. Costs of this application to be in the cause.

21. It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 31ST DAY OF JULY 2025.

N.A. MATHEKA

JUDGE

