



**Raghwani & 2 others v Kerai (Legal Representative of the Estate of Kanji Mavji Kerai) (Environmental and Land Originating Summons E042 of 2021) [2025] KEELC 7684 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7684 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E042 OF 2021  
CA OCHIENG, J  
NOVEMBER 6, 2025**

**BETWEEN**

**DHANJI LAXMANBHAI BHIMJI RAGHWANI ..... 1<sup>ST</sup> APPLICANT  
MANJI KANJI RAGHWANI ..... 2<sup>ND</sup> APPLICANT  
VIRJI KANJI RAGHWANI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**DEVJI KANJI MAVJI KERAI ..... RESPONDENT  
LEGAL REPRESENTATIVE OF THE ESTATE OF KANJI MAVJI KERAI**

**RULING**

1. Judgement was entered in this matter on 9<sup>th</sup> February 2023, where the Court directed that LR No. 209/4593/2 and the shares of the tenants in common in the parcel be valued and that  $\frac{1}{4}$  (25%) of its undivided share held by the Respondent be disposed to the Applicants herein on first priority. Subsequently, the Applicants filed a Notice of Motion dated 19<sup>th</sup> February 2024 seeking orders that the value of 25% of the suit parcel's share, being kshs.40 million be held in a joint account held by the party's advocates and that the Deputy Registrar of this Court executes the instruments of transfer of the 25 % share of the suit parcel held by the Respondent. This Court allowed the application vide its Ruling delivered on 14<sup>th</sup> November 2024.
2. What is now before the Court for determination is the Respondent's Notice of Motion dated 7<sup>th</sup> November 2024 where he seeks the following Orders:
  - a. Spent.
  - b. Spent.



- c. That this Honourable Court be pleased to review its decree made on 9<sup>th</sup> February 2023.
  - d. That the Respondent/Applicant be authorized to sell his 25% undivided share in that parcel of land known as LR NO 209/4593/2 to a Third Party, one Jim Wachira Kabiru that has made a more favourable offer than the valuation made pursuant to the decree issued herein.
  - e. That this Honourable Court be pleased to make such orders as it may deem necessary in circumstances to give effect to order Number 3 herein above.
  - f. That costs of this application be provided for.
3. The application is premised on grounds on its face and on the Respondent's supporting affidavit. He represents the estate of Kanji Mavji Ramji and avers that pursuant to this Court's Decree, the estate of Kanji Mavji Ramji has offered to purchase the 75% undivided shares of the Applicants' with no success. Further, that the estate has received an offer from one JIM Wachira Kabiru to purchase 25% of the undivided share of the subject parcel at Kshs. 62,500,000/= and it has accepted the offer. He contends that the estate is entitled to receive the best price obtainable for the 25% undivided share in the subject property and it is only fair that the Decree issued on 9<sup>th</sup> February 2023 be reviewed to allow the estate to dispose of their undivided share to the said Third Party.
  4. He also claims that at the time of filing of the Originating Summons in this matter, the 1<sup>st</sup> Applicant deponed at paragraph 11 of his affidavit that the Applicants were holding rents of over Kshs. 10,450,560/= belonging to the estate of Kanji Mavji Kerai thus in view of the unaddressed issue of the rents held by the Applicants, it is only fair and just that the Decree be reviewed to capture the said issue.
  5. The Applicants filed Grounds Opposition to the application. They contend that it is an abuse of court process, vexatious and frivolous  
and does not satisfy the conditions for the review. Further, that this Court's Ruling of 14<sup>th</sup> November 2024 has already been executed thus the application is overtaken by events. They reiterate that the application is an attempt to continue delaying justice and the expeditious conclusion of this matter.
  6. The application was canvassed by way of written submissions

### **Submissions**

7. The Respondent submits that he has established grounds that warrant review of the Decree dated 9<sup>th</sup> February 2023, because if he is forced to sell 25% share to the Respondent, he stands to lose ksh. 22,500,000/= which does not align with section 96 (1) (c) of the [Land Registration Act](#).
8. He also relies on the case of ARJ Capital Limited v Njeru & 3 Others (ENVIRONMENT & LAND CASE E041 OF 2022) [2024] KEELC 323 (KLR) (24 January 2024) (Ruling), to submit that the application is not opposed as Grounds of Opposition filed by the Applicants only reply to the application on point of law and not facts.
9. On their part, the Applicants submit that they have established that the Orders issued on 16<sup>th</sup> April 2024 are valid, just and proper and execution process levied against the Respondent is lawful on all facets thus the Respondent does not warrant discretion for review. To this end, they rely on the case of Nelliwa Builders & Civil Engineers v Kenyatta National Hospital [2003] eKLR.



## Analysis and Determination

10. Upon consideration of the instant Notice of Motion application including the supporting affidavit, Grounds of Opposition and submissions, the only issue for determination is whether the Decree issued on 9<sup>th</sup> February, 2023 should be reviewed.
11. The Respondent seeks a review of this Court's decree issued more than two (2) years ago, so that he can be allowed to sell 25% share of the suit parcel to a third party instead of giving the Applicant's priority as ordered in the said Decree. The Applicants' opposed the instant application and contend that the application is filed late in the day and that they had already commenced execution pursuant to this Court's Ruling of 14<sup>th</sup> November 2024, in which the Deputy Registrar of this Court was directed to execute transfer of 25% share of the suit parcel in their name.
12. The legal provisions governing review are contained in Section 80 of the [Civil Procedure Act](#) and Order 45 of the Civil Procedure Rules. Section 80 of the [Civil Procedure Act](#) provides that:
  - “ 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.”
13. While Order 45 of the Civil Procedure Rules stipulates that:
  - “(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.”



14. The Court of Appeal stated as follows in Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers [2019] eKLR;

“....An order for review is restricted to parameters set out by the law..”

15. Further, in Afapack Enterprises Limited v Punita Jayant Acharya (Suing as the Administrator of the Estate of the late Suchila Anatrai Raval) [2018] eKLR the Court of Appeal observed as follows while agreeing that a delay of nine (9) months in filing an application for review was inordinate:

“It is also an important requirement that the application for review should be made without unreasonable delay....”

16. In this instance the Respondent seeks to review the Decree more than two years after it was issued. Except for the explanation that he has gotten a buyer for the 25% stake in the suit property that is offering more money, he has not provided any sufficient reason on why he delayed in seeking a review of the said Decree. For an application for review to succeed the Applicant has to demonstrate that there was discovery of new and important evidence which was not within his knowledge at the time of the original decision was made. Further, that there has to be proof that there is an error apparent on the face of record or any other sufficient reason. The application should also be filed without unreasonable delay.

17. Based on the facts as presented while relying on the legal provisions I have quoted including associating myself with decisions cited, I find that the Respondent has not fulfilled the parameters of review as set out in Order 45 of the Civil Procedure Rules. Further, that there was inordinate delay in filing the instant application and no sufficient cause has been demonstrated.

18. In the circumstances, I find the instant Notice of Motion application unmerited and will proceed to dismiss it.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025**

**CHRISTINE OCHIENG.**

**JUDGE**

In the presence of:

Mukatha for Maina for Applicant

Wachera holding brief for Kangethe for Respondent

Court Assistant: Joan

