



REPUBLIC OF KENYA



**Maingi v Mwongera & another (Civil Appeal E146 of 2023)
[2025] KEHC 17253 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17253 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E146 OF 2023
HM NYAGA, J
NOVEMBER 20, 2025**

BETWEEN

ALBERT MWANGI MAINGI APPELLANT

AND

HARUN MWONGERA 1ST RESPONDENT

JOHN M'MARETE 2ND RESPONDENT

RULING

1. The application coming up for determination is the Notice of Motion dated 17th March, 2025, which seeks the following orders:-
 - (a) The application be certified urgent and be heard ex-parte, on priority and expeditiously in the first instance.
 - (b) The Honourable Court, pending hearing and determination of this application inter-partes, be pleased to stay execution of its Judgment delivered herein on 20th December, 2024 more particularly, with regard to order No.2 thereof requiring the applicant's Land No. KIIRUA NAARI 601 to be sold by public auction and or transferred to the 1st respondent if on expiry of 90 days, a sum of Kshs. 420,000 = plus interest at 14% from 3rd October, 2017 to 20th December, 2024 will not have been paid to the 1st respondent.
 - (c) The Honourable Court be pleased to review and or vary its Judgment delivered herein on 20th December, 2024 by ordering and directing inter alia, that the appellant pays half (i.e 50%) of the total amount payable to the 1st respondent and the balance thereof amounting to 1 2 and or 50% of all the monies payable to the 1st respondent be settled by the 2nd respondent.
 - (d) The Honourable Court be pleased to further vary its Judgment delivered herein on 20th December, 2024 by extending by a further five (5) months, the period within which the



applicant is to spread and pay either his and half (50%) of the total monies payable under the decree to the 1st respondent or such other amount as the Honourable Court may be pleased to order the applicant to pay.

- (e) The Honourable Court be pleased to invoke its inherent power to suspend and allow the applicant to spread and pay settle his part of the claim and or such other amount as the Honourable Court may direct him to pay to the 1st respondent, by way of five (5) equal monthly installments with effect from May, 2025.
 - (f) The Honourable Court be pleased to order that upon full payment of the decretal amount to the 1st respondent, the inhibition order registered against the applicant appellant's land No. Kiiroa Naari-maitei 601 on 5th October, 2021 BE automatically lifted and or removed.
 - (g) The 1st) respondent be cited and committed to civil jail for disobeying and being in contempt of the Honourable Court's Judgment orders of 20th December, 2024.
 - (h) The Honourable Court be pleased to make any other and or other further order in the interest of justice.
 - (i) Costs of the application be provided for.
2. The application is based on the grounds set out on the face of it and is supported by the applicant's affidavit sworn on even date.
 3. In a nutshell, it is the applicant's case that contrary to this court's judgment, the 1st respondent is on the verge of selling and transferring the stated land parcel to himself. That the 1st respondent, in total contravention of this court's judgment proceeded to assess his lower court costs and has taken out notice to show cause against the applicant. That the applicant needs sufficient time and is in the process of severing the money to be able to honor this courts judgment.
 4. The applicant further states that had the 2nd respondent agreed to co-operate it would have been easier to raise the decretal sum within the 90 days given by the court. That he be given 5 months to settle the 1st respondent's claim. That having given a reasonable proposal, it would be prejudicial to have his land transferred to the 1st respondent, when the 2nd respondent has the ability to, and can be compelled to settled the decretal sum.
 5. The 1st respondent swore a replying affidavit on 25th April, 2025. It is deponed that the applicant is forum shopping, having filed a similar motion in the lower court, hence the Preliminary Objection filed therein. That upon receiving the objection, the applicant rushed to this court with the present application. That the applicant is seeking to appeal against the Judgment herein in the guise of an application for review.
 6. It is further averred that the orders of this court were very clear, that should the decree herein not be satisfied within the 90 days, recovery would proceed through a public auction of the suit property. That there are no grounds put forth to warrant a review of the judgment herein. That having been awarded costs, the 1st respondents advocate duly taxed his bill of costs, so there is no ill will or malice.
 7. It is further deponed that having pronounced itself in its judgment, this court is functus officio, and the only option for the applicant is to move to the appropriate forum or appeal.
 8. The 2nd respondent filed a replying affidavit sworn on 6th May, 2025. In short, he is opposed to the said application. He added that the applicant has no locus to seek that he be cited for contempt of court. That the application is an abuse of the court process.



9. Parties filed submissions which I have considered and will not rehash herein.
10. Looking at the application, the substantive prayers sought are for the review of the Judgment delivered herein and for extension of time to comply with the orders for payment of the decretal sum, and for payment of the decretal sum in instalments.
11. This court's power of review is anchored upon the provisions of Section 80 of the *akn ke act 1924 3 Civil Procedure Act*, which provides:- 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 order therein as it thinks fit".
12. Order 45 Rule (1) further amplifies the said provision by stating as follows:-
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 SUBPARA (1)
 Any person considering himself aggrieved
 SUBPARA (a)
 by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 SUBPARA (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 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.
 SUBPARA (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 to the review".
13. It is settled law that an application for review is available where there is an error apparent on the face of the record, the discovery of a new and important matter that was not available to a party or for any other sufficient reason.
14. In the Indian case of *Aribam Tuleswar Sharma vs. Ariban Pishak Sharma* (1979) 45CC 389, 1979(11) UJ 300 SC, it was held that:

“The power of review may be exercised on the discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits that would be province of a Court of Appeal. A



power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

15. There is no unanimity on whether any other sufficient reason ought to be analogous to the first two requirements. I find that any other reason need not ejusdem generis or analogous to the first two grounds, as was stated in *The Official Receivers – Versus – Freight Forwarders Kenya Limited* (2000) eKLR.
16. Looking at the application, I find no ground to review the orders of the court as per the Judgment, in that no new and important matter has been discovered. There was no apparent error on the face of the record. There is neither other sufficient reason that has been adduced.
17. In asking that he pays 50% and that the other 50% be paid by the 2nd respondent, the applicant is actually asking this court to re-write its judgment. The Judgment herein was entered against the applicant and the 2nd respondent jointly and severally. The clause, which allowed the property in question to be sold by a public auction was a clear and conscious order of the court.
18. In my opinion, that prayer is only to be considered on appeal. This court cannot purport to sit on such an appeal of a decision of a Judge of concurrent jurisdiction.
19. The applicant also sought an order to pay the decretal sum in five equal instalments with effect from May, 2025. Alternatively, he also sought an extension of time sought, an extension of time for five months to settle the amount.
20. There is no doubt that this court has powers to extend time for any action to be undertaken. Order 50, Rule 6, provides as follows:-

“ 6. 6. Power to enlarge time [Order 50, rule 6.]

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

21. In this regard, even though the court gave the applicant 90 days to make payment, it still has powers to enlarge time, if there are sufficient grounds and the circumstances of the case so dictate, to meet the ends of justice.
22. At the time of writing this ruling, the five months sought by the applicant have lapsed. Therefore, even if the application is allowed, the time sought has come to an end.
23. The applicant ought not to assume that time would start running after the delivery of this ruling. Therefore, even if such time was to be given, the same has lapsed by effluxion of time.
24. It is also not in dispute that under Order 21 Rule 12 of the Civil Procedure Rules, the court has powers to make orders for payment of a decretal sum in instalments. It provides as follows:-

12. Decree may direct payment by instalments



- (1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
- (2) After passing of any such decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.

25. Against, just like the prayer for extension of time, the prayer is now overtaken by events, since the effective date which the applicant sought was from May, 2025.

26. In conclusion, I find as follows:-

- a. The prayer for review of the Judgment is dismissed.
- b. The prayer for extension of time is moot as the time sought has lapsed.
- c. The prayer for payment by instalments is moot, as the time sought has lapsed.
- d. In the event the decretal sum has not been paid in full as at the time of delivery of this ruling, the 1st respondent is at liberty to execute the decree in the manner provided under Order (b) of the Judgment of this court.
- e. Costs of this application are awarded to the 1st respondent.

DATED, SIGNED & DELIVERED AT MERU THIS 20TH DAY OF NOVEMBER, 2025.

H. M. NYAGA

JUDGE

